

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 9, 2013

10:06 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Doc# 5227 Motion to Approve / Notice of Debtors' Motion
Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code
for an Order Approving Amendment to Engagement Letter with
Debtors' Chief Restructuring Officer, Lewis Kruger

Doc# 4768, (CC: Doc no. 4649) Hearing RE: Phillip Scotts'
Motion to (1) Determine that Bankruptcy Estate Owns Title to
Note, (2) Void State Court Title Transfer, and (3) Enjoin Post
Petition State Court Prosecution (related document(s)4649)

(CC: Doc# 4635) Adj. Hearing RE: Motion for Objection to
Claim(s)/ Debtors' Objection to Proofs of Claim.

(CC: Doc# 4947) Motion for Objection to Claim(s) Number:
242/Claim Filed by Paul N. Papas II.

(CC: Doc# 4156) Adj. Hearing RE: Motion for Omnibus Objection
to Claim(s) /Debtors' Twentieth Omnibus Objection to Claims
(Borrower Claims with Insufficient Documentation). Hearing on
this matter as it relates to Mark Ragonese is going forward.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(CC: Doc# 4199, 4831) Adj. Hearing RE: Motion for Omnibus
Objection to Claim(s) /Debtors' Twenty-Second Omnibus Objection
to Claims (Borrower Claims with Insufficient Documentation).
Going forward as to the proof of claim filed by William C.
Walker and Keiran Walker (Claim No. 5529) and George Davis
(Claim No. 3443).

(CC: Doc# 4734) Adj. Hearing RE: Motion for Omnibus Objection
to Claim(s) / Twenty-Sixth Omnibus Objection to Claims
(Borrower Claims with Insufficient Documentation) Hearing Going
Forward as to claims of Phenon Walker (Claim No. 5429), Fannie
Kendrick Dietrich (Claim No. 1385), and Juana Cerna (Claim No.
3816). Hearing as it relates to the claim filed by Mary Lynn
Weber (Claim No. 3474) adj. to 11/7/2013.

(CC: Doc# 4735) Adj. Hrg. RE: Motion for Omnibus Objection to
Claim(s) / Debtors' Twenty-Seventh Omnibus Objection to Claims
(Borrower Claims with Insufficient Documentation) Going Forward
as to Claims of Phenon Walker (Claim No. 4942), Freddie M.
Scott (Claim No. 3751), and Bette Jean Yelder (Claim No. 2002).

(CC: Doc# 4902) Omnibus Motion for Omnibus Objection to
Claim(s) / Debtors' Thirty-First Omnibus Objection to Claims
(Late-Filed Borrower Claims)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(CC: Doc# 4887) Motion for Omnibus Objection to Claim(s) /
Debtors' Thirtieth Omnibus Objection to Claims (No Liability
Borrower Claims - Books and Records).
Reset for 11/07/2013 at 2:00 pm as to claim of Gwendell L.
Philpot (Claim No. 5067) and; James C. and Judith A. Winkler
(Claim No. 3582). Hearing as it relates to all other claimants
will be going forward.

(CC: Doc# 4996, 4998) Motion for Omnibus Objection to
Claim(s)/ Debtors' Thirty-Third Omnibus Claims Objection
(Facially Defective and Time-Barred Securities Claims) with
hearing to be held on 10/9/2013 at 10:00 AM at Courtroom 501
(MG) Responses due by 9/30/2013.

Transcribed by: Sharona Shapiro
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for Debtors
1290 Avenue of the Americas
New York, NY 10104

BY: ADAM A. LEWIS, ESQ.
MELISSA A. HAGER, ESQ.
JORDAN A. WISHNEW, ESQ.
LORENZO MARINUZZI, ESQ.
NORMAN S. ROSENBAUM, ESQ.
PAUL A. GALANTE, ESQ.
JONATHAN M. PETTS, ESQ.
MERYL L. ROTHCHILD, ESQ.

KRAMER, LEVIN, NAFTALIS & FRANKEL, LLP

Attorneys for Official Creditors' Committee
1177 Avenue of the Americas
New York, NY 10036

BY: ELISE S. FREJKA, ESQ.
STEPHEN D. ZIDE, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

Conflicts Counsel to Debtors

101 Park Avenue

New York, NY 10178

BY: MARYANN GALLAGHER, ESQ.

LAW OFFICES OF KIM DSOUZA

Attorney for Phillip Scott

2 Bordi Lane

Highland, NY 12528

BY: KIM DSOUZA, ESQ.

ACCESS LEGAL SERVICE

Attorneys for Wendy Alison Nora

and similarly situated individuals

310 Fourth Avenue South

Suite 5010

Minneapolis, MN 55415

BY: WENDY ALISON NORA, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAW OFFICES OF LAIRD J. HEAL

Attorney for Thomas James La Casse

3 Clinton Road

Sterling MA 01564

BY: LAIRD J. HEAL, ESQ.

BRACEWELL & GIULIANI LLP

Attorneys for Lender Processing Services, Inc.

1251 Avenue of the Americas

49th Floor

New York, NY 10020

BY: STAN CHELNEY, ESQ.

PRINCE LOBEL TYE LLP

Attorneys for Residential Funding Company

100 Cambridge Street

Suite 2200

Boston, MA 02114

BY: ANDREW L. BALDWIN, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SILVERMANACAMPORA LLP

Special Counsel to the Creditors' Committee

100 Jericho Quadrangle

Suite 300

Jericho, NY 11753

BY: ROBERT D. NOSEK, ESQ.

JUSTIN S. KRELL, ESQ.

LOCKE LORD LLP

Attorneys for RFC Trust; GMAC Mortgage Group, LLC;

GMAC Financial Services; Cerberus Capital Management;

MERS; MERSCORP Holdings; Stephen Feinberg; Kenneth

Urgwuadu; Manish Verma; Judy Faber; Amy Nelson

111 South Wacker Drive

Chicago, Illinois 60606

BY: JULIE C. WEBB, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HINSHAW & CULBERTSON LLP

Attorneys for Gray & Associates, Duncan Delhey, Jay
Pitner, Michael Riley, and William Foshag
800 Third Avenue
13th Floor
New York, NY 10022

BY: BENJAMIN NOREN, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee
201 Varick Street
Suite 1006
New York, NY 10014

BY: BRIAN S. MASUMOTO, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MENTER, RUDIN & TRIVELPIECE, P.C.

Attorneys for Bass & Moglowsky, Arthur Moglowsky,
David Potteiger, and Penny Gentges.
Suite 200
308 Maltbie Street
Syracuse, NY 13204

BY: KEVIN M. NEWMAN, ESQ. (TELEPHONICALLY)

SAUL EWING LLP

Attorneys for Jeffrey Stephan
Centre Square West
1500 Market Street
38th Floor
Philadelphia, PA 19102

BY: ADAM H. ISENBERG, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GOLDMAN BEHR LLC

Attorneys for Bette and Willie Yelder
1132 South McDonough Street
Montgomery, AL 36104

BY: HENRY JENKINS, ESQ. (TELEPHONICALLY)

ALSO PRESENT: (TELEPHONICALLY)

KAREN BEJARANO, Pro Se
JOHN DEMPSEY, Mercer USA
COLT B. DODRILL, Wolfe & Wyman LLP
BARRY ESKANOS, Pro Se
BETTE JEAN YELDER, Creditor
WILLIAM C. WALKER, Pro Se
TIMOTHY W. SCOTT, Pro Se
KENNETH RUSSO, Pro Se
MARGE PFUNDER, Pro Se

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated.

3 All right. We're here in Residential Capital, LLC,
4 number 12-12020.

5 Mr. Marinuzzi?

6 MR. MARINUZZI: Good morning, Your Honor. For the
7 record, Lorenzo Marinuzzi, Morrison & Foerster, on behalf of
8 the debtors.

9 Your Honor, the first matter for hearing this morning
10 is found at the bottom of page 5 of the amended agenda, and
11 that's the debtors' motion for an order approving the amendment
12 to the engagement letter with Lewis Kruger, the debtors' CRO.

13 The committee filed a statement of no objection
14 regarding the success fee. The success fee was arrived at
15 after consultation with the committee. We appreciate their
16 filing.

17 We've also submitted in support of the motion three
18 declarations, one by Pam West, a director; one by Bill Nolan of
19 FTI; and one by John Dempsey of Mercer. They are all on the
20 phone, to the extent the Court or anybody has questions of
21 them. And we appreciate Your Honor's accommodation to allow
22 them to participate telephonically and not have to fly into New
23 York.

24 Your Honor, in early February, the debtors appointed
25 Mr. Kruger as their CRO and filed a motion seeking approval of

1 that appointment. We worked with the committee to modify the
2 scope of Mr. Kruger's duties, and ultimately, on March 5th, the
3 Court approved the debtors' appointment of Mr. Kruger as CRO.
4 We indicated in the initial application and at the hearing that
5 we hope to come back to the Court shortly with a success fee.
6 The success fees typically for CROs, as Your Honor understands
7 and knows, are usually set forth in the engagement letter, pre-
8 negotiated before day one of the appointment. Here, it was
9 different. We wanted to work with the committee and we wanted
10 to have consensus on it.

11 We got sidetracked and Mr. Kruger, obviously, was
12 focused on getting a plan put together, and a mediation, and
13 things that we all view as very important. And to his credit,
14 he continued to work hard to try to achieve consensus on the
15 success fee. And ultimately, several weeks ago, we picked the
16 discussions back up again. And the board consulted with its
17 advisors, including FTI and including Mercer, consulted with
18 the committee, and arrived at a success fee of two million
19 dollars.

20 This was a little different from the typical CRO
21 engagement; as I noted, we had the benefit of eight months' of
22 performance, effectively, to review the accomplishments of Mr.
23 Kruger thus far, and certainly that was a benefit to all of us
24 in assessing the reasonableness of the fee. But like typical
25 CRO retentions in the Southern District, it will be subject to

1 the Jay Alix protocol which we know is important to the Court
2 and to the U.S. Trustee. And so it's clear, to the extent the
3 Court approves entry into the amendment by the debtors, it
4 still leaves the success fee, at the conclusion of the case,
5 subject to the reasonableness standard. Now, my particular
6 views are it's already justified based on the accomplishments
7 to date, but it's reserved for another day.

8 Your Honor, if the Court has any questions of the
9 declarants -- the declarations, I think, speak for themselves
10 and demonstrate that the board properly deliberated, considered
11 this advice, and considered the views of the committee and
12 arrived at an amount that is certainly market.

13 THE COURT: I think what we should do first, Mr.
14 Marinuzzi, is offer the declarations in evidence in support of
15 the motion.

16 MR. MARINUZZI: Your Honor, thank you. I guess I
17 would offer as Debtors' Exhibit 1, and I apologize for not --

18 THE COURT: Well, you can just identify them by the
19 ECF docket number.

20 MR. MARINUZZI: Sure.

21 THE COURT: Each of them has it as part of the
22 heading, as the header in each document.

23 MR. MARINUZZI: Your Honor, the first declaration is
24 docket number 5228, which is the declaration of Pamela West in
25 support of the debtors' motion.

1 THE COURT: That was filed on September 27, 2013. Are
2 there any objections to the West declaration?

3 All right, the West declaration is admitted into
4 evidence.

5 (West declaration was hereby received into evidence as Debtors'
6 Exhibit 1 [Docket Number 5228], as of this date.)

7 MR. MARINUZZI: Your Honor, Debtors' Exhibit 2 would
8 be the declaration of John Dempsey in support of the motion,
9 docket number 5229.

10 THE COURT: And that also was filed on September 27,
11 2013. Are there any objections -- and I assume in addition to
12 the Dempsey declaration, you're offering the exhibits to it?

13 MR. MARINUZZI: That's correct, Your Honor.

14 THE COURT: All right. Are there any objections to
15 the Court admitting into evidence the Dempsey declaration?

16 All right, it's admitted into evidence.

17 (Dempsey declaration and exhibits was hereby received into
18 evidence as Debtors' 2 [Docket Number 5229], as of this date.)

19 MR. MARINUZZI: Your Honor, and the third declaration,
20 Debtors' Exhibit 3 is docket number 5230, which is the
21 declaration of William Nolan in support of the motion.

22 THE COURT: And that, likewise, was filed on September
23 27, 2013.

24 Are there any objections to the Nolan declaration?

25 All right. It, too, will be admitted into evidence.

1 (Nolan declaration was hereby received into evidence as
2 Debtors' Exhibit 3 [Docket Number 5230], as of this date.)

3 MR. MARINUZZI: Thank you, Your Honor.

4 THE COURT: Does anybody else wish to be heard with
5 respect to the debtors' motion for approval of the amendment to
6 Mr. Kruger's engagement letter?

7 MR. ZIDE: Good morning, Your Honor; Stephen Zide from
8 Kramer, Levin on behalf of the committee.

9 I will be brief; we did put a statement in. Mr.
10 Marinuzzi's characterizations were correct. The committee
11 believes Mr. Kruger played an active and fruitful role in these
12 cases and the success fee was the subject of negotiations with
13 the committee and we believe the success fee is appropriate
14 under the circumstances.

15 THE COURT: Thank you.

16 Anybody else wish to be heard?

17 Mr. Masumoto, does the U.S. Trustee wish to be heard
18 on this?

19 MR. MASUMOTO: Good morning, Your Honor; Brian
20 Masumoto for the Office of the United States Trustee.

21 Your Honor, as Mr. Marinuzzi indicated in his
22 statement, the order does include a provision that the
23 reasonableness of the success fee will be subject to a 330
24 review at the time the application is filed.

25 Accordingly, we have no objection.

1 THE COURT: All right. Thank you very much, Mr.
2 Marinuzzi -- Mr. Masumoto; I'm sorry.

3 MR. MASUMOTO: That's okay.

4 MR. MARINUZZI: Your Honor, just one point. We've
5 modified, at the request of the junior secured noteholders, the
6 proposed order to add the reservation of rights. I'm sorry;
7 the caveat that it's not being paid out of their cash
8 collateral.

9 THE COURT: I saw that this morning, I saw the amended
10 order.

11 All right. Pending before the Court is the debtors'
12 motion pursuant to Sections 105(a) and 363(b) of the Bankruptcy
13 Code for an order approving amendment to an engagement letter
14 with debtors' chief restructuring officer Lewis Kruger. That
15 motion is at ECF docket number 5227. In addition, the three
16 declarations that have now been admitted into evidence were
17 provided with the motion itself.

18 In the motion, the debtor seeks approval of the
19 amendment to the Kruger engagement letter pursuant to Sections
20 105(a) and 363(b) of the Bankruptcy Code. The memorandum in
21 support of the motion provides the applicable law in the
22 circumstances. This essentially is, in the first instance, a
23 business judgment rule test. The declarations submitted in
24 support of the motion provide uncontroverted evidence that the
25 decision by the board to approve the success fee, subject to

1 the Jay Alix protocol, reflects a reasonable business judgment.
2 Furthermore, the declaration, particularly of Mr. Dempsey,
3 shows that the amount that's been set for the proposed
4 compensation which has been negotiated with the committee is
5 reasonable and perhaps below market, if one can determine a
6 market for such services.

7 Likewise, the Court is also, obviously, very familiar
8 with the role that Mr. Kruger has played in this case to date.
9 Since he's become involved in this case, he's been very
10 substantially involved in the mediation which led to the plan
11 support agreement, the approval of the disclosure statement,
12 the negotiation of the FGIC settlement which has now been
13 approved but is subject to appeal by the junior secured
14 noteholders, and certainly with all other aspects. So the
15 Court is very comfortable, in these circumstances, concluding
16 that the debtors' board has exercised appropriate business
17 judgment in recommending -- in negotiating the proposed
18 amendment to the Kruger engagement letter and agreeing upon the
19 amount. And under all of these circumstances, the Court
20 approves -- grants the motion.

21 MR. MARINUZZI: Thank you, Your Honor.

22 THE COURT: And I did look at the amended order and
23 it's satisfactory in form.

24 MR. MARINUZZI: Thank you, Your Honor.

25 Your Honor, that brings us to the trilogy of

1 foreclosure review professional motions which begins on page 6
2 of the agenda and runs through page 13. We had hoped to be in
3 a position to propose final orders, and there are lots of
4 things going on and we haven't been able to focus on them as
5 much as we'd like to. So what we'd propose to do is continue
6 them for, I think, the thirteenth time, on an interim basis
7 through the November 7th omnibus hearing.

8 THE COURT: Anybody else wish to be heard on that?

9 All right, they're approved (sic) on an interim basis.

10 MR. MARINUZZI: Thank you, Your Honor.

11 Your Honor, I will cede the podium to my colleague
12 Jonathan Petts to take up matter 4 on page 14 of the agenda,
13 and I'd ask the Court if I can excuse myself to go back to the
14 office. But before I do that, I just wanted to know if the
15 Court had any questions about anything the debtors are doing
16 while I'm here.

17 THE COURT: The one question I have -- this is going
18 to come up when we talk about some of the claim objections --
19 and I will admit that I'm a little bit at a loss. Some of
20 this, as I'm sure you're all aware, I've had the transition of
21 law clerks and I thought we were pretty diligent about making
22 sure everything was followed up.

23 At an earlier hearing, I had raised an issue about the
24 debtors and the committee, particularly with the assistance of
25 the special borrower's counsel, agreeing on a set of procedures

1 that would apply, particularly with respect to -- these are on
2 claim objections, specifically with respect to loan
3 modifications. And I've lost track of what the status is. I
4 know there was a draft that was submitted, and frankly, I
5 looked on the docket. I wasn't sure whether it got entered; I
6 didn't see it on the docket.

7 MR. WISHNEW: Your Honor, I don't --

8 THE COURT: This may have gotten caught in this
9 transition.

10 MR. WISHNEW: For the record, Your Honor, I'm Jordan
11 Wishnew, Morrison & Foerster.

12 With regards to your question, that order has gone
13 back and forth between debtors and borrower's counsel. We, I
14 believe, vetted it with chambers. It hasn't yet been docketed,
15 but we do have a -- I believe it's, at this point, in near
16 final form. And not to speak for Mr. Nosek, but I believe that
17 we are intending to send the form of order to the borrowers in
18 advance of the December 10th hearing, letting them know that
19 they will have to make their submissions to the Court two weeks
20 before the December 10th hearing, as well as appear in person
21 for that hearing for that hearing, consistent with Your Honor's
22 instructions during a prior hearing.

23 THE COURT: Okay. So is the prop -- Mr. Nosek, do you
24 want to address this as well? I mean, is the proposed form of
25 order set at this point, or is it still being tinkered with?

1 I'd like to -- I can't find it; let me put it -- I know I saw
2 an earlier version of it, okay? And I don't know what -- I
3 was, frankly, unclear of what the status was.

4 MR. NOSEK: Your Honor, we did -- it did go back and
5 forth several times between us and debtors' counsel, and we
6 actually are signing off on the form of the order. We're good
7 with the final form.

8 THE COURT: Okay.

9 MR. NOSEK: There was a little bit of delay in trying
10 to get a hold of some of the borrowers to make sure the dates
11 were good. And then I believe that we just decided to go
12 forward with the dates that we have.

13 THE COURT: Because today we've got -- when we deal
14 with the claims objections, there are a number of claims
15 objections where the responses address issues relating to loan
16 modifications. So let's see where we get to today. I wanted
17 to be -- what I was unclear about whether this has already
18 been -- it hasn't been resolved. Okay. So we'll see where we
19 get to when we discuss some of the claims objections today.

20 MR. WISHNEW: Thank you, Your Honor.

21 THE COURT: I think if one of -- if you think that the
22 two of -- you know, that your respective constituencies have
23 agreed on the form, forward it to my chambers, okay, and I'd
24 like to look at it again.

25 MR. WISHNEW: We have agreed on the format, and after

1 the hearing we will submit it to chambers.

2 THE COURT: Okay. Mr. Marinuzzi, you're certainly
3 excused, if you want to go back. I wanted to raise that now,
4 just --

5 MR. MARINUZZI: Thank you very much. We've got plan
6 supplement documents that have to be filed this week, so I'll
7 head back to the office. Thank you.

8 THE COURT: Thank you, Mr. Marinuzzi.

9 MR. ZIDE: May I be excused as well, Your Honor?

10 THE COURT: You certainly may, Mr. Zide.

11 MR. ZIDE: Thank you.

12 THE COURT: All right. What's next?

13 Mr. Masumoto, I appreciate your being here today under
14 the circumstances in which you and your -- I guess it's very
15 few of you who are actually not furloughed. So if at any time
16 you need to excuse yourself, you certainly feel free to do so,
17 okay?

18 MR. MASUMOTO: Thank you, Your Honor.

19 MR. PETTS: Thank you, Your Honor. Jonathan Petts of
20 Morrison & Foerster for the debtors.

21 I'm here on the motion of Phillip Scott to impose the
22 automatic stay to determine that the bankruptcy estate owns
23 title to his note and to void -- oh, Mr. Scott's counsel is
24 here, so I will cede the podium to him.

25 THE COURT: All right. Thank you. Yeah, if you'll

1 please come on up. Come on up to the podium; make your
2 appearance.

3 MR. DSOUZA: Hi. My name is Kim DSouza. I'm the
4 counsel for Phillip Scott.

5 THE COURT: All right, Mr. DSouza, go ahead. Could
6 you spell your last name, sir?

7 MR. DSOUZA: D-S-O-U-Z-A.

8 THE COURT: Thank you.

9 MR. DSOUZA: You just want me to proceed to state
10 the --

11 THE COURT: Go ahead with your motion.

12 MR. DSOUZA: Okay. Your Honor, we've made a motion
13 for violation of automatic stay against the Bank of New York
14 and the state court. We served Bank of New York and the state
15 court. Neither responded. The debtor and debtor-in-possession
16 responded and asked that the motion be dismissed. And so we
17 are requesting the motion -- the automatic stay to preserve
18 assets of the estate based on derivative --

19 THE COURT: Show me the derivative asset -- give me
20 any evidence at all that this is an asset of the estate. I
21 mean, the debtors' response is, it's not -- the debtor doesn't
22 have an interest in this property. So where is the asset of
23 the estate?

24 MR. DSOUZA: Your Honor, the derivative would be on
25 behalf of a creditor, okay, a creditor seeking to get paid out

1 of the estate. Okay? The asset --

2 THE COURT: Who's the creditor?

3 MR. DSOUZA: The creditor would be the securitized
4 trust, RAMP.

5 THE COURT: You're asserting the rights of a third
6 party? Is that what you're telling me?

7 MR. DSOUZA: Yes, that's what I'm telling you, yes.

8 THE COURT: Do you have any authority for being able
9 to do that?

10 MR. DSOUZA: Your Honor, my client is in a unique
11 position of knowledge to seek --

12 THE COURT: Let me ask my question very
13 straightforward and simple.

14 MR. DSOUZA: Yes.

15 THE COURT: Do you have any authority supporting your
16 attempt to assert the rights of a third party to provide you
17 with standing to bring this motion?

18 MR. DSOUZA: In terms of a consent --

19 THE COURT: Authority -- no, authority means you have
20 a case -- do you have a case that supports an argument that
21 your client can assert the rights of a third party in bringing
22 this motion to this court. Yes or no?

23 MR. DSOUZA: I don't have a name of a case at the
24 moment, but I'd like --

25 THE COURT: Well, come on. You know, this is a fully-

1 briefed motion.

2 MR. DSOUZA: Right.

3 THE COURT: And so the answer to my question is no you
4 don't have any authority to support your assertion of someone
5 else's rights in connection with this motion, is that right?

6 MR. DSOUZA: Your Honor, could I have an adjournment
7 to provide you the --

8 THE COURT: No. No. It's your motion.

9 MR. DSOUZA: Right.

10 THE COURT: Okay? The debtors responded by arguing in
11 part that you lack standing. Okay? So now is the time and the
12 place for the hearing. And I guess the answer is, you
13 certainly didn't identify any authority in your papers.

14 MR. DSOUZA: There's no authority, Your Honor, that
15 says that an individual can't bring it.

16 THE COURT: There most certainly is. There's lots of
17 authority that you can't assert the rights of a third party.

18 MR. DSOUZA: If you're --

19 THE COURT: You've not filed -- your client has not
20 filed a claim in this bankruptcy.

21 MR. DSOUZA: If you're int --

22 THE COURT: Stop. Your client --

23 MR. DSOUZA: Yes.

24 THE COURT: -- has not filed a claim in this
25 bankruptcy. Is that correct?

1 MR. DSOUZA: Correct.

2 THE COURT: Okay. What is it that gives you party-in-
3 interest standing in this case, since your client has not filed
4 a proof of claim in the case?

5 MR. DSOUZA: Knowledge of fraud, Your Honor.

6 THE COURT: Well, you think that any stranger who
7 comes in and says I have knowledge of fraud, that that gives
8 them standing?

9 MR. DSOUZA: Well, I think that --

10 THE COURT: Could you answer my question?

11 MR. DSOUZA: In the absence of indicating the nature
12 of the fraud, no.

13 THE COURT: Do you have any case that supports your
14 position that a stranger to this case can come in and obtain
15 standing because it believes it has knowledge of fraud?

16 MR. DSOUZA: Your Honor, any individual can come in if
17 they have knowledge that will protect the assets of the
18 bankruptcy estate if --

19 THE COURT: Give me --

20 MR. DSOUZA: -- they have knowledge.

21 THE COURT: -- give me a case that says that. You
22 think a stranger can walk in off the street and get standing
23 because it thinks it has knowledge of some fraud?

24 MR. DSOUZA: If he has unique knowledge --

25 THE COURT: Do you have a case --

1 MR. DSOUZA: -- that's going to protect --

2 THE COURT: No, tell me do you have a case that
3 supports your argument? Don't -- that's what I want to hear:
4 yes or no? Do you have a case?

5 MR. DSOUZA: There's a number of cases that have dicta
6 on this --

7 THE COURT: Give me the names and citations of the
8 cases that support your argument.

9 MR. DSOUZA: Okay. One is Labuzan.

10 THE COURT: What's the cite.

11 MR. DSOUZA: Fifth Circuit.

12 THE COURT: Give me the cite of the case.

13 MR. DSOUZA: Can I just have a fifteen-minute
14 adjournment for that?

15 THE COURT: No.

16 MR. DSOUZA: Okay.

17 THE COURT: I've got a full calendar.

18 MR. DSOUZA: Okay.

19 THE COURT: You know, you filed a motion the debtor
20 responded. They say you don't have standing. Okay? If you
21 have case support -- case support -- I don't want to hear
22 argument right now, I want to hear do you have a case that
23 supports your argument that your client has standing? If you
24 can't give me the case, fine. Fine, meaning that you come here
25 without authority to support your position.

1 What's your next argument?

2 MR. DSOUZA: Okay.

3 THE COURT: I take your silence on that point as you
4 don't have a case. You can't point to a single case?

5 MR. DSOUZA: Well, I indicated a case. I didn't
6 indicate the citation.

7 THE COURT: Did you cite the case in your papers?

8 MR. DSOUZA: Well, I was -- I received the papers from
9 the other side just yesterday, and I was going to put in a
10 response. I just did not have the time to do so. I was going
11 to include the name of that case and many others.

12 THE COURT: But you can't give me the names of any
13 other cases?

14 MR. DSOUZA: Well, I have all the names, they're just
15 in my car. I didn't bring them in --

16 THE COURT: I see.

17 MR. DSOUZA: -- because I, quite frankly, didn't
18 anticipate this being quite as substantive today as it is.

19 THE COURT: What did you think it was going to be?
20 You made the motion.

21 MR. DSOUZA: Well, I thought -

22 THE COURT: Did you think you were just -- what did
23 you think this was going to be? You made a motion. The debtor
24 filed a response.

25 MR. DSOUZA: Yes. I go to a lot of court proceedings,

1 Your Honor, and you've got a hot bench. Okay? So -- which is
2 good.

3 The argument here is that my client has a vested
4 interest as a guarantor --

5 THE COURT: A vested interest?

6 MR. DSOUZA: Absolutely. Vested interest as a
7 guarantor -- effectively a guarantor --

8 THE COURT: Who owns the note?

9 MR. DSOUZA: The note is owned by the creditor, RAMP
10 2005 RZ3.

11 THE COURT: And is RAMP a debtor in this case?

12 MR. DSOUZA: Ramp is a creditor.

13 THE COURT: Is RAMP a debtor in this case?

14 MR. DSOUZA: RAMP is not a debtor; RAMP is a creditor.

15 THE COURT: Okay. And you're attempting to argue what
16 you believe is the interest of RAMP as a creditor?

17 MR. DSOUZA: Correct.

18 THE COURT: Okay. All right, I have your argument,
19 thank you.

20 MR. DSOUZA: Thank you.

21 MR. PETTS: Jonathan Petts of Morrison & Foerster for
22 the debtors. Your Honor, Your Honor has touched on a number of
23 points that we've raised in our briefing. Unless you have any
24 further questions --

25 THE COURT: Address the issue of subject-matter

1 jurisdiction.

2 MR. PETTS: Well, I think that if Mr. Scott wants to
3 prevent Bank of New York from foreclosing on his mortgage or
4 selling his mortgage, that is a dispute between two nondebtors,
5 and there's no conceivable impact that that dispute could have
6 on the debtors' estates, and therefore there's no subject-
7 matter jurisdiction under the Pacor case and its progeny, as
8 cited in our --

9 THE COURT: Okay.

10 MR. PETTS: -- briefs.

11 THE COURT: Mr. DSouza do you want to respond with the
12 issue of subject-matter jurisdiction? Come on up to the
13 microphone. Just on the issue of subject-matter jurisdiction.
14 What's the basis for subject-matter jurisdiction in a dispute
15 between two nondebtors?

16 MR. DSOUZA: The automatic stay provision provides
17 standing to, again, any individual --

18 THE COURT: Mr. DSouza --

19 MR. DSOUZA: -- provided that they can show --

20 THE COURT: -- Mr. DSouza --

21 MR. DSOUZA: -- damage.

22 THE COURT: -- did you hear my question? What's the
23 basis for subject-matter jurisdiction in this court of a
24 dispute between two nondebtors?

25 MR. DSOUZA: The basis of jurisdiction is that it has

1 to do with property of the estate.

2 THE COURT: Well, what's the property of the estate?

3 MR. DSOUZA: The property of the estate that property
4 that would be used to pay the creditor for which the creditor
5 otherwise will not receive payment.

6 THE COURT: All right. I have your argument. I'm
7 going to take the matter under submission. I'll enter an
8 order.

9 MR. DSOUZA: Thank you.

10 MS. HAGER: Good morning, Your Honor. Melissa Hager
11 from Morrison & Foerster on behalf of the debtors. Your Honor,
12 I believe that brings us up to page 14 of the amended agenda,
13 with the first contested item, or at least listed as contested,
14 which is the debtors' objections to proof of claims filed by
15 Thomas La Casse against Homecomings Financial and Residential
16 Capital. And this involves claims number 3852, 3856 and 3860.
17 And the objection -- the debtors' objection can be found on the
18 docket number 4635.

19 Also appearing in this matter on behalf of the debtors
20 this morning is Andrew Baldwin of Prince Lobel Tye, who
21 represents Residential Funding Company in the litigation
22 brought by Mr. La Casse in Connecticut. He is present in the
23 courtroom, as is Ms. Delehey, who signed the declaration in
24 support of the objection. To the extent Mr. Baldwin speaks
25 today and answers any questions for the Court, a pro hac vice

1 order has been entered with regard to him.

2 Your Honor, Mr. La Casse filed three proofs of claims
3 against the debtors --

4 THE COURT: Is anyone appearing for Mr. La Casse?

5 MR. HEAL: Yes, Your Honor.

6 THE COURT: Come on up and just make your appearance.

7 Okay? And then I'll give you a chance to speak.

8 MR. HEAL: Laird Heal of Worcester, Mass for --

9 THE COURT: I'm sorry, can you spell your last name?

10 MR. HEAL: H-E-A-L. Thank you.

11 THE COURT: All right. Thank you. And have you been
12 admitted pro hac, or are you a member of the bar of the court?

13 MR. HEAL: I've been admitted pro hac vice.

14 THE COURT: Thank you very much.

15 Go ahead, Ms. Hager.

16 MS. HAGER: Thank you, Your Honor. Mr. La Casse filed
17 three proofs of claims aggregating almost thirty-seven million
18 against the debtors. Specifically, he filed virtually
19 identical claims against Homecomings Financial and Residential
20 Funding, LLC, in the amount of 5.289 million each, and one
21 claim against Residential Funding in the amount of 26.5
22 million.

23 I'd like to address first the two identical claims,
24 which is the Homecomings proof -- what we refer to in our
25 papers as the Homecomings proof of claim, which is claim number

1 3852 and the second RFC proof of claim, which is claim number
2 3856.

3 These claims in the amount of over five million
4 dollars on the face of the claim relate to fraudulent
5 foreclosure. The claims assert direct punitive as well as
6 consequential damages allegedly arising from the foreclosure of
7 Mr. La Casse's property located in Longmeadow, Massachusetts,
8 in or about November of 2010. The five-million-dollar claim
9 includes the following items, without limitation: 2 million
10 dollars for loss of reputation; 100,000 -- I'm sorry --
11 900,000, representing the value of the property; another
12 900,000 for punitive damages; and 500,000 dollars for emotional
13 distress.

14 By way of background, briefly, this foreclosure
15 proceeding arises from a note that was executed by Mr. La Casse
16 on or about November 15th, 2006 for the Longmeadow property
17 that was issued in favor of -- the note was issued in favor of
18 Homecomings and identified Mortgage Electronic Registration
19 Systems, as we all know as MERS, as the nominee for
20 Homecomings. There was also a mortgage executed in favor of
21 homecomings with regard to the note.

22 Thereafter, Homecomings transferred the note to Aurora
23 Loan Servicing LLC, and in 2010, Aurora commenced a foreclosure
24 action and obtained a foreclosure judgment, and the property
25 was sold in late 2010. None of the debtors, including

1 Homecomings, who originally was on the note and mortgage, was
2 involved in the foreclosure action.

3 After the foreclosure action in December of 2010, Mr.
4 La Casse commenced an action in Connecticut Superior Court,
5 where Mr. La Casse lived at the time, even though the property
6 was in Massachusetts, against Aurora Loan Services LLC and
7 MERS. No debtor was named as a defendant in that action at the
8 time it was commenced, nor has the debtor been named as a
9 defendant in that action today, nor has he sought relief to
10 name us, despite the passage of almost three years.

11 THE COURT: Has the statute of limitations on any of
12 those claims run?

13 MS. HAGER: I do not believe so. I can defer to
14 counsel for --

15 THE COURT: But --

16 MS. HAGER: -- Massachusetts counsel.

17 THE COURT: -- you haven't made that argument that
18 they --

19 MS. HAGER: No, we haven't, Your Honor.

20 THE COURT: So I mean, your papers, in part, focus on
21 the absence of a claim of this type having been asserted
22 against any of the debtors in -- I guess we'll also deal --
23 what there's both Massachusetts actions and Connecticut
24 actions. And --

25 MS. HAGER: Correct.

1 THE COURT: -- was the debtor named in any -- any of
2 the debtors named in any of them?

3 MS. HAGER: In the Residential Funding -- the second
4 claim, yes. And I think that's a very different fact pattern.
5 Here, in response --

6 THE COURT: Let me ask --

7 MS. HAGER: Sure.

8 THE COURT: -- this. I mean, the -- was there a
9 requirement that the debtors be named as a -- the parties seem
10 to focus on they weren't named, we could amend now to add them
11 if the stay were lifted. It seems kind of beside the point.
12 The issue -- if the claimant has asserted a proper claim in
13 this court on some theory against any of the debtors, whether
14 or not they named the debtors in the prior litigation, does it
15 matter?

16 MS. HAGER: I think it does, Your Honor, here.
17 Because the proof of claim for the first two that we're talking
18 about, putting aside the Residential Funding first filed proof
19 of claim, the relief and the support, the evidence for the
20 prima facie case for his proof of claim cites to an action
21 that's pending in Connecticut State Court against other parties
22 that does not name the debtor.

23 THE COURT: Okay. Different issue. Because it may be
24 that the support they've provided for the claim here against
25 the debtor is insufficient, because it relies on a pleading in

1 another court against other parties that don't deal with the
2 debtors' role. But let me ask you a hypothetical.

3 MS. HAGER: Sure.

4 THE COURT: If the claim here had asserted all of the
5 elements of a claim against any one of the debtors, would it
6 make a difference whether that debtor had been named in the
7 prior state court litigation?

8 MS. HAGER: Absent a statute of limitations issue,
9 probably not --

10 THE COURT: Okay.

11 MS. HAGER: -- although here I don't think -- if he
12 had even named Homecomings, who was the debtor party, and in
13 his complaint filed in Connecticut Superior Court, it does
14 state Homecomings -- it acknowledges that Homecomings was
15 listed in the original note and the mortgage. He knew about
16 them. He --

17 THE COURT: Yes. But there was no obligation for the
18 claimant here either to name Homecomings in the prior
19 litigation or assert allegations -- even if it didn't name
20 Homecomings, to assert allegations establishing wrongdoing on
21 the part of Homecomings.

22 The real issue -- isn't the real issue for me whether
23 this proof of claim includes appropriate support to
24 establish -- I mean, it's essential -- and I think in some of
25 the other claim objections, I think you quite properly deal

1 with the standard. I essentially am applying a motion to
2 dismiss standard. Do you agree with that?

3 MS. HAGER: I agree with that. And I think that
4 this -- these --

5 THE COURT: And this one may fail on that count, but
6 it's not because Homecomings wasn't named in the other
7 litigation. It's to the extent they want to rely on a pleading
8 that doesn't itself -- whether Homecomings was named or not, if
9 that pleading had asserted all of the elements of a cause of
10 action against Homecomings, short of naming them as a
11 defendant, and they wanted to incorporate that here, perhaps
12 that would be okay.

13 Now, your argument is, they haven't done that.
14 There's nothing in that state court complaint that states a
15 cause of action against Homecomings transported here by
16 incorporating it into a proof of claim.

17 MS. HAGER: Agreed. But I think there's other points
18 that we raise as well.

19 THE COURT: Okay. Well, go ahead.

20 MS. HAGER: And I think the other points are, even if
21 they -- even if he had named us or if he purported to name us,
22 it wouldn't --

23 THE COURT: He didn't --

24 MS. HAGER: -- survive a motion to dismiss, because we
25 were not the servicer, and there's no proof that we were

1 involved in the foreclosure --

2 THE COURT: So you're getting to the heart of it,
3 which is, I'm only -- I've got to deal with what I have, not
4 with what some other court has, okay? And what I have is a
5 proof of claim. They attempt to support it with a complaint in
6 another case that doesn't name any of the debtors. And so when
7 I say I'm looking at the four corners of the proof of claim,
8 including anything attached to it. Okay?

9 And the issue to me is, does anything that's before me
10 state a claim against any of the debtors, and what's the claim?
11 Do you agree with that?

12 MS. HAGER: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. HAGER: And I think under that standard, the
15 motion -- the objection to the claim should also be granted,
16 because he's absolutely established no proof as to any debtors'
17 involvement in any of the alleged fraudulent acts.

18 THE COURT: So let's deal -- let's separate it out.
19 We're talking about two properties, right: the Weston property
20 and the --

21 MS. HAGER: Yeah, I was dealing --

22 THE COURT: -- Aurora property.

23 MS. HAGER: -- I was dealing just with the --

24 THE COURT: The Aurora.

25 MS. HAGER: -- the Aurora lawsuit --

1 THE COURT: Okay.

2 MS. HAGER: -- which is the Massachusetts property,
3 right now, which has the duplicate claims against Homecomings
4 as well as Residential -- RFC.

5 THE COURT: Okay. All right. And with respect to the
6 Aurora property, that's what, in Longmeadow, Massachusetts?

7 MS. HAGER: Correct, Your Honor. And that property
8 has been foreclosed on and sold at sale. And in connection
9 with the pending Connecticut Superior Court action, a motion
10 for summary judgment by the two defendants was made. It was
11 not granted because the court found that there was one issue
12 there as to whether Aurora, who they did find had the actual
13 note to foreclose the property, whether they had the authority
14 as the agent to foreclose the property. And that's the sole
15 issue that's left right now in that Connecticut State Court.

16 THE COURT: And how is that being dealt with?

17 MS. HAGER: It's -- we're not involved in that action.

18 THE COURT: I know.

19 MS. HAGER: But I assume it's going to be, they'll do
20 further discovery on that and proceed with either another
21 motion for summary judgment or something else procedurally
22 similar.

23 THE COURT: Okay. All right, go ahead.

24 MS. HAGER: The --

25 THE COURT: So with respect to -- with respect to --

1 MS. HAGER: Sure.

2 THE COURT: -- this Longmeadow or Aurora property, the
3 claimant asserts a RICO violation by the debtor?

4 MS. HAGER: He says he does.

5 THE COURT: Okay.

6 MS. HAGER: He doesn't assert any facts or any support
7 as to what that is and why he's entitled to it. I mean, the
8 problem here, Your Honor, is that -- and I appreciate that this
9 is a motion to dismiss standard, but the claimants for some of
10 the borrowers -- for the borrowers -- and these are a great
11 case in example is, they're asserting five million dollars for
12 claims. They're asserting claims to get the value of the
13 property back, punitive damages, as --

14 THE COURT: So the last one that was up here was a
15 thirty-million-dollar claim. This one is a lot less, but I
16 mean --

17 MS. HAGER: No, actually, collectively, they're over
18 thirty -- they're almost thirty-seven million.

19 THE COURT: All right.

20 MS. HAGER: So he just spread it out amongst the
21 debtors.

22 THE COURT: Spread it out.

23 MS. HAGER: So but, Your Honor, on their face, they
24 don't survive a motion to dismiss.

25 THE COURT: That's what I want you to address. Tell

1 me what are the shortcoming with respect to the assertion of a
2 RICO claim against the debtor?

3 MS. HAGER: They've established no business activity
4 in naming any of the debtors that would rise to that level of
5 that type of claim. They've also -- I mean, they've also --

6 THE COURT: Look, you filed an objection to the proof
7 of claim. I understand that.

8 MS. HAGER: Correct.

9 THE COURT: But you don't -- you spilled more ink over
10 the issue of what's happened in the other state court actions
11 than you have about what's before me. Okay? So if I --
12 because I think what I have to do is apply the motion to
13 dismiss standard and decide whether they've alleged all of the
14 elements of a RICO claim, but you never addressed what are the
15 elements of the RICO claim, did you?

16 MS. HAGER: No, we did not.

17 THE COURT: No, you're making me do all the work.

18 MS. HAGER: That's certainly not our intention, Your
19 Honor. We --

20 THE COURT: Look, I want to make clear -- and this is
21 not intended as a criticism of you -- when I get claims
22 objections -- this one there's counsel on the other side --
23 many of them are pro se parties. Okay. Whether it's a pro se
24 party or a party represented by counsel, I evaluate the proof
25 of claim based on the applicable standards. If the standard

1 here is the motion to dismiss standard, and the claim purports
2 to assert a RICO claim, and you're seeking to have it expunged,
3 you need to establish that it doesn't -- frankly, I got to tell
4 you, here, it's pretty easy to do with respect to what they've
5 put before you -- before me with respect to a RICO claim. But
6 you have to go through and be able to establish this proof of
7 claim fails to establish the elements of a claim for RICO, and
8 here's why. Okay?

9 And you haven't done that. Okay? And I don't -- I
10 gets lots of -- I get these declarations from your firm that
11 say we've examined our books and records and there's no basis
12 for any liability. Well, that's really nice. I wouldn't
13 expect that your books and records show liability for RICO.

14 MS. HAGER: Your Honor --

15 THE COURT: So it does me absolutely no good. And
16 that was the point I've made at prior hearings. This message
17 needs to get across. Okay?

18 MS. HAGER: Understood. One point of clarification,
19 Your Honor. With regard to the RICO claim, that's actually on
20 the -- that's on the Weston, Connecticut property. For the
21 first two proofs of claims that we were talking about
22 previously, all that is listed in connection with this proof of
23 claim is for a fraudulent foreclosure, and an itemized list of
24 damages, and is direct damages, punitive damages, attorneys'
25 fees, costs --

1 THE COURT: Let's put the damages aside, because I
2 don't even get to the issue of damages if the proof of claim
3 doesn't state a claim. Okay? Because you're not seeking to
4 expunge the claim because it asks for too much money, you're
5 asking to expunge the claim because it doesn't state a claim.

6 MS. HAGER: Because there's no liability.

7 THE COURT: Because there's no liability.

8 MS. HAGER: Correct.

9 THE COURT: And to do that --

10 MS. HAGER: And I hear you -- I certainly hear you and
11 I understand Your Honor's position with regard to the second
12 proof of claim which is the 26.5 million. And we're happy to
13 put this objection over, do further briefing on this issue, and
14 certainly speak with opposing counsel on that issue. But I
15 think you have a very, very different issue with regard to the
16 5.2-million-dollar proofs of claims.

17 There, what he is alleging is fraudulent foreclosure,
18 but has not alleged that we were involved in the foreclosure at
19 all. By his own admission he acknowledges that it was Aurora
20 that brought the foreclosure proceeding, that that's who they
21 sued. They also sued MERS. There's absolutely no ev --
22 putting aside the amount of the damages and whether you're
23 entitled to emotional distress and two million dollars for loss
24 of reputation, there is no valid claim as to those two debtors
25 on the 5.2 million dollars. There's no -- even in his reply

1 papers it says something to the effect of, well, they're
2 obvious defendants. If they are --

3 THE COURT: That's very nice that he may think they're
4 obvious defendants, but that doesn't sustain a claim.

5 MS. HAGER: Correct. And that's why I think on those
6 two claims, separating those two, you do not survive a motion
7 to dismiss by saying I have a fraudulent foreclosure action.
8 I've got something pending there and I may have issues with it.
9 They have not stated anything as to one of these debtors for
10 which relief even in a dollar amount could be set. So I think
11 the motion to dismiss standard as to those two claims is a very
12 different view.

13 THE COURT: I'm going to hear opposing counsel, but I
14 must say, that's the argument I need to have, okay, from you,
15 that they haven't asserted the elements of the claim for
16 fraudulent foreclosure against any of the debtors. Okay,
17 that's your argument, I understand the argument. It's made in
18 the papers, and I'm going to allow counsel to respond.

19 MS. HAGER: Certainly.

20 THE COURT: Go ahead and deal with the Weston
21 property.

22 MS. HAGER: Deal with the rest of it? Okay.

23 THE COURT: Yes.

24 MS. HAGER: With regard to the other remaining claim,
25 which is the -- what we refer to as the first RFC proof of

1 claim, I hear Your Honor with regard to this, and I recognize
2 that there is a RICO claim that's alleged in there and we have
3 not gone through in our objection and recited line-by-line why
4 that's not applicable here.

5 Rather than make the Court do the work and -- you have
6 a full calendar today, I'd respectfully ask to adjourn the
7 objection --

8 THE COURT: Well, I'm not adjourning it yet, because I
9 don't have to be a genius to know that they haven't asserted
10 the elements of a RICO claim, okay?

11 MS. HAGER: Okay. I can --

12 THE COURT: But I'll decide what I'm going to do with
13 this. But what I don't like, Ms. Hager, is your reply, at a
14 minimum, should have dealt with the elements of the claim,
15 okay, and not leave it to the Court to do all the work on it.
16 I just don't blow off --

17 MS. HAGER: Understood.

18 THE COURT: -- claims because it may seem preposterous
19 on its face or whatever. I still give every one of them the
20 consideration it's entitled to. That consideration may result
21 in sanctions against somebody for filing frivolous pleadings,
22 but I take every one of them seriously.

23 MS. HAGER: Understood, Your Honor. I mis -- I --

24 THE COURT: Okay. Let me hear from opposing counsel.

25 MS. HAGER: Sure.

1 THE COURT: Mr. Heal.

2 MR. HEAL: Good morning, Your Honor. And thank you.

3 I have to say --

4 THE COURT: I don't know if you should thank me yet,
5 because I read your papers, and I frankly think they're pretty
6 pathetic.

7 MR. HEAL: Well, I was going to say, you're suggesting
8 a level of detail in proofs of claim that I haven't seen from
9 the other side before. But --

10 THE COURT: You haven't seen from the other side?

11 MR. HEAL: Well, I haven't seen --

12 THE COURT: You file a proof of claim. Your client
13 files a proof of claim. You assert a RICO claim with nothing
14 more than the bare allegation, essentially, that they committed
15 a RICO violation. You think that's sus -- that withstands a
16 claim objection seeking to expunge it?

17 MR. HEAL: Your Honor, I --

18 THE COURT: To be entitled -- you haven't met the
19 threshold for your proof of claim to be entitled to -- that
20 it's prima facie evidence of validity and amount.

21 MR. HEAL: Your Honor, the letter that -- the demand
22 letter of the Connecticut counsel that I attached to the proof
23 of claim, I thought, supported all of the elements that I've
24 put into it. I did redo his arithmetic and came with a
25 slightly lower figure. But aside from that --

1 THE COURT: You think that letter supported a RICO
2 claim?

3 MR. HEAL: That --

4 THE COURT: Which is the enterprise -- do you know
5 what the elements of a RICO claim are? Do you?

6 MR. HEAL: Your Honor --

7 THE COURT: Can you like tick off for me the elements
8 of a civil RICO claim.

9 MR. HEAL: -- I'm sorry. I've gone over them, but I
10 couldn't --

11 THE COURT: Well, make your argument, you know.
12 You've asserted a RICO claim. Tell me what the elements -- in
13 the Second Circuit, what are the elements of a civil RICO
14 claim, and point me to how you've satisfied each of those
15 elements in your pleading.

16 MR. HEAL: Well, for the first, I don't think I could
17 recite the elements of a RICO claim, but certainly --

18 THE COURT: It's very easy to say "RICO", but it's
19 another thing to be able to establish that you've actually set
20 forth support for each element of a RICO claim. You're asking
21 for treble damages on an amount that seems preposterous on its
22 face to me to start. And you have not set forth -- in response
23 to the objection, I would have thought you would have come
24 forward and say we have properly asserted the elements of a
25 civil RICO claim because; and you'd go through each of them,

1 and you would show that you did.

2 You acknowledge you haven't done that, correct?

3 MR. HEAL: I can't recite them off the top of my
4 head --

5 THE COURT: No, have you done that in your papers?

6 MR. HEAL: I don't believe I've done that. I could
7 tell you what the facts are.

8 THE COURT: No, I want you to tell me what each of the
9 elements of a civil RICO claim is and how you have supported
10 that claim. Can you do that?

11 MR. HEAL: Not without rebriefing the matter as best
12 as --

13 THE COURT: Well, don't tell me about rebriefing the
14 matter. The obligation was to do it in the proof of claim or
15 set forth -- the proof of claim needs to set forth a proper
16 legal basis for the assertion of liability. And I may be
17 critical of the debtor because you throw out RICO and they
18 don't really respond to it, but that burden, in the first
19 instance, was yours.

20 MR. HEAL: I speak to how they have brought this case
21 and didn't have the right, and then took over the debtors'
22 property and reduced it from a two-million-dollar showpiece to
23 nothing.

24 THE COURT: What's the basis of your claim with
25 respect to the Longmeadow, Massachusetts property?

1 MR. HEAL: Okay, now with respect to that, Your Honor,
2 there's a curious feature which is that in the bankruptcy
3 court, a proof of claim was -- or I believe a motion for leave
4 from stay -- it was filed. And it -- the attached note showed
5 that it was endorsed over to Residential Funding. But then in
6 the Connecticut case, when they filed a motion for summary
7 judgment, they filed a copy of the note which had that part
8 whited out. And so as I said in the response, we don't know
9 what the correct note looks like. All we know is that somebody
10 has marked it up and submitted these as accurate papers. Each
11 counsel is on record, and you've got the transcripts, they say
12 ours is accurate.

13 So the basis of the claim is, have they really
14 negotiated this note? Have they not? If they haven't, well,
15 then obviously these two entities, Homecomings and Residential
16 Funding, are parties-in-interest. That's --

17 THE COURT: I don't understand your argument.

18 MR. HEAL: Well, if they didn't transfer this note --
19 they say they have, but now they're giving us documents that
20 are inconsistent. And the only reasonable way to resolve that
21 inconsistency is to say that somebody marked up a copy, didn't
22 mark up the original. And since we don't have the original, we
23 don't yet know if it's Homecomings or if it's Residential
24 Funding or if it's Aurora or anybody who actually is the party-
25 in-interest for this loan. All we know is that they have been

1 along the chain.

2 THE COURT: You lost in the Massachusetts Land Court
3 with respect to the Longmeadow property, correct?

4 MR. HEAL: The land --

5 THE COURT: The court issued a judgment permitting
6 Aurora to foreclose. And on November 22, 2010, Aurora bought
7 the property after an auction. Is that correct?

8 MR. HEAL: Now, the land court action -- I'm not sure
9 if this Court is familiar, but having gone there a couple of
10 times, they will not permit a homeowner to even appear in the
11 case unless that homeowner says I have the right to assert the
12 Servicemembers Civil Relief Act relief. Other than that, it's
13 simply a judgment that a person is not entitled to the relief
14 from the Servicemembers Civil Relief Act, namely that the
15 foreclosure is not valid until they leave the service. So
16 that's the only issue in that land court case. The case of
17 substance is the one filed in the Stamford Superior Court.

18 THE COURT: And tell me what the basis of your claim
19 here is with respect to this Longmeadow property.

20 MR. HEAL: The Longmeadow property, they have alleged
21 that the loan was fraudulent and shouldn't have been given.
22 There is Massachusetts law that if a person -- if the lender
23 reasonably knows that a person can't repay a loan, it's not
24 actually enforceable. The Sta -- that Stamford case is, if you
25 ask me, overdue for being amended and it hasn't been, just as

1 the summary judgment has not been renewed.

2 But aside from that, they're just alleging that the
3 foreclosure should not have been done and there are defects
4 with it.

5 In the aftermath of the foreclosure, there were some
6 property management issues. They damaged a roof. They went in
7 and failed -- they changed the locks but then --

8 THE COURT: Is it correct that the Connecticut court
9 entered a default judgment against your client on August 18th,
10 2009?

11 MR. HEAL: That's in the Weston, Connecticut case.

12 THE COURT: All right, okay. All right, you're right.

13 MR. HEAL: And as I cite in my brief, the Connecticut
14 courts treat the matter of whether a plaintiff in a foreclosure
15 action was entitled to the relief sought as a jurisdictional
16 matter, as a matter of standing in the first instance, so that
17 they will reopen such a judgment at any time if the homeowner
18 can show increasingly good means that the plaintiff was not
19 entitled to the relief. There's sufficient cases at every
20 level of Connecticut appellate court to justify that assertion.

21 THE COURT: With respect to the Longmeadow property,
22 you've attached a complaint, a state court complaint, but I
23 don't see any allegations of wrongful conduct by Homecomings in
24 that complaint.

25 MR. HEAL: No, there weren't Your Honor.

1 THE COURT: Okay. So you agree with the statement I
2 made to Ms. Hager before, that that state court complaint
3 cannot provide the basis for a claim in this case?

4 MR. HEAL: On the papers submitted to this Court, as I
5 said, the only thing that could be a hook for the judge would
6 be to notice, as we noticed a couple of years into litigation,
7 that we were given papers in one case that didn't agree with
8 papers in the other.

9 THE COURT: Mr. Heal, you agree there is no fact
10 stated in the Connecticut complaint that support the assertion
11 of your claim in this court?

12 MR. HEAL: Well, I wouldn't agree with that, Your
13 Honor. It's just --

14 THE COURT: So point me to specific facts in the
15 Connecticut complaint that support a claim against any of the
16 debtors in this case.

17 MR. HEAL: Your Honor, the -- it would --

18 THE COURT: Give me page, line number reference. I
19 want to look specific -- I want you to tell me very
20 specifically what facts in the Connecticut complaint you
21 believe support the assertion of a claim against any of the
22 debtors in this case.

23 MR. HEAL: Well, as a general matter, as I'm looking
24 for the papers, if you substitute Aurora Loan Service for --

25 THE COURT: You can't substitute anybody, okay? I

1 look at the four corners of that pleading and I don't find a
2 single allegation that supports a claim against any of the
3 debtors. You can't just say well, if you substitute one of the
4 debtors for another party, well, then; okay?

5 Is there anything, as it exists today, in the four
6 corners of that complaint, that supports the assertion of a
7 claim against any of the debtors? Yes or no?

8 MR. HEAL: Not in the complaint, Your Honor.

9 THE COURT: Okay.

10 MR. HEAL: In the summary judgment motion. And that's
11 where I pointed the Court, that when we examined the summary
12 judgment motion we noticed that the note had been doctored.
13 And from that, I based my assertion of possible liability.

14 THE COURT: All right, Ms. Hager, respond to the issue
15 of whether there has been alteration to any of the documents,
16 the note, for example.

17 MS. HAGER: Not that we're aware of. The problem
18 here, Your Honor, is is that the "they" he keeps on using:
19 they submitted the motion for relief; they submitted the papers
20 in the Connecticut court; is Aurora.

21 We assigned it to them. Aurora has the original note.
22 We don't have that note anymore. We sold it to them. So --
23 and all --

24 THE COURT: What they did with it, that's their
25 problem.

1 MS. HAGER: Unless we're named in a suit and have a
2 viable cause of action brought against us. Correct, Your
3 Honor.

4 THE COURT: Okay.

5 MS. HAGER: Your Honor, if I might just briefly on --

6 THE COURT: Yes.

7 MS. HAGER: -- the second claim for the Connecticut
8 property? Just a couple of things. And I certainly understand
9 your instructions for going forward with claims objections. I
10 think all of us here understand that and will make sure we
11 address those type of issues going forward.

12 But if you look at the face of the claim and the
13 documents and everything that were submitted in connection with
14 the -- and I'm talking about the Connecticut Weston property,
15 the Valley Forge property. If you look at the claim itself, if
16 you look at the backup documentation to the claim and also if
17 you look at the reply that they filed, the claim states in one
18 place that it's twenty-five million for damages under civil
19 RICO "settlement demand". So his reply further embellishes
20 upon that fact to say well, no, no, I'm not really looking for
21 my damages from the motion to vacate. I've got an enforceable
22 agreement against you from the letter from Attorney Brown.

23 And we, looking back at it now, yeah, I probably
24 should have gone through all the elements of civil RICO, but
25 what we did address there in connection with his reply is, if

1 that's a binding settlement agreement attached to his proof of
2 claim, then I'm in trouble, Your Honor, because I've probably
3 got a lot of binding agreements out there that I better go fix
4 today.

5 But so I think we addressed the -- we addressed the
6 elements of his claim as we best could, given the information
7 there. Hindsight's twenty-twenty. I probably should have gone
8 through the Second Circuit RICO claims that there is no
9 enterprise. I don't understand how you -- or RICO is like a
10 fraud claim, it has to be pled very specifically. And I don't
11 think you even get to the prima facie burden of giving them the
12 benefit of the doubt on that.

13 THE COURT: I don't think it would have taken you more
14 than a couple of paragraphs to do it.

15 MS. HAGER: I agree with you, Your Honor. But I still
16 think that when you go back to it -- and I'm not going to go
17 through the contorted history, I know you have a full calendar
18 and I know that you've -- as other people have noted, you're
19 very -- you read everything before you come on this bench. But
20 I think the problem here with the proof of claim is also as
21 well is he doesn't get past the burden of proof on this based
22 upon what's submitted and where we are.

23 I mean, the second proof of claim, again, it's twenty-
24 five million for damages under civil RICO --

25 THE COURT: Forget the amount. Forget the amount.

1 MS. HAGER: Okay.

2 THE COURT: Okay. It could have been a dollar. It
3 would still raise the same issue as to whether it's asserted a
4 claim for the liability.

5 MS. HAGER: And we respectfully submit, as is set
6 forth in our papers, that the proof of claim, as filed, even
7 adding in all the documents with the reply, fails to state a
8 sound legal basis for any claims against any of these debtors.

9 THE COURT: All right. I'm going to take it under
10 submission.

11 MS. HAGER: Thank you. Let's see. That will bring us
12 to the second contested matter which is Paul Papas. I think my
13 colleague Adam Lewis will be handling that. Thank you, Your
14 Honor. May I be excused?

15 THE COURT: Yes, you can.

16 MS. HAGER: Thank you.

17 THE COURT: Who is here for Mr. Papas?

18 MR. LEWIS: I think Ms. Nora is here today.

19 Your Honor, Adam Lewis.

20 THE COURT: Hang on just a second. Ms. Nora come up
21 here. Ms. Nora, are you appearing for Mr. Papas?

22 MS. NORA: I am, Your Honor.

23 THE COURT: Have you been admitted pro hac vice to
24 represent Mr. Papas?

25 MS. NORA: I have, Your Honor. I have --

1 THE COURT: No, you haven't.

2 MS. NORA: I've been --

3 THE COURT: No, you haven't.

4 MS. NORA: -- admitted pro hac vice to represent
5 myself --

6 THE COURT: Speak into the microphone.

7 MS. NORA: -- myself and all others similarly
8 situated.

9 THE COURT: Well, that's wrong. That's wrong. Okay.

10 MS. NORA: Are you revoking that order today?

11 THE COURT: Well, I'm entering an order -- I'm going
12 to enter an order to show cause --

13 MS. NORA: Okay.

14 THE COURT: -- why your -- why leave to appear in the
15 ResCap cases pro hac vice should not be revoked.

16 MS. NORA: All right.

17 THE COURT: Okay.

18 MS. NORA: I need to be able to respond to that --

19 THE COURT: I went back -- stop. Just -- yes, you
20 will have a chance to respond to it. Okay? I'm going to enter
21 a written order to that effect.

22 I went back and looked at the order that got entered,
23 it was in the form you submitted it. It doesn't say -- you
24 recite that you think you're representing thousands of people.
25 You have your own lawsuit. And it's certainly proper for you,

1 pro se, to appear.

2 Have you appeared for any other creditors in this
3 case?

4 MS. NORA: I have, Your Honor.

5 THE COURT: How many?

6 MS. NORA: I have appearances for Shane Haffey as co-
7 counsel with pro hac vice counsel, Heather McKeever that will
8 be heard on November --

9 THE COURT: Okay.

10 MS. NORA: -- 7th.

11 THE COURT: All right. I'm going to enter -- well, if
12 it's going to be heard on November 7th, I will enter an order
13 to show cause why your pro hac vice admission should not be
14 revoked for anyone other than appearing on your own behalf.
15 The pleadings you filed in this matter, this specific matter --

16 MS. NORA: You're talking about Papas?

17 THE COURT: -- yes, I'm talking about Papas.

18 MS. NORA: Yes.

19 THE COURT: Are scurrilous and frivolous and are
20 vexatious. And I believe that they -- even assuming you were
21 admitted pro hac to represent anybody other than yourself, the
22 pleadings you have filed in this matter would support revoking
23 your pro hac vice application. But I'm going to give you a
24 chance to respond to that in writing.

25 MS. NORA: Absolutely, Your Honor. Because this

1 entire proceeding --

2 THE COURT: Ms. --

3 MS. NORA: -- is a fraud.

4 THE COURT: I do not want to hear -- you have been
5 nothing but accusations about fraud in connection --

6 MS. NORA: We can prove it, Your Honor.

7 THE COURT: Stop.

8 MS. NORA: We can --

9 THE COURT: Don't interrupt, Ms. Nora. Don't
10 interrupt. Go sit down. Go sit down.

11 MS. NORA: I am --

12 THE COURT: I will give you an opportunity to argue
13 with respect to Mr. Papas' claim. If you deviate from
14 addressing solely the issues with respect to Mr. Papas' claim,
15 I will cut you off and I will have you escorted from the
16 courtroom. So go sit down, and I will give you a chance to
17 respond only to the specific issues raised by the objection to
18 the Papas claim.

19 I don't want to hear about approval of the disclosure
20 statement. I don't want to hear about anything else that
21 happened in the case. I don't want to hear anything else from
22 you now. If you say another word, I'm going to have you
23 escorted from the courtroom right now. So go sit down, and I
24 will give you a chance to respond solely with respect to the
25 Papas claim.

1 MS. NORA: Your Honor, I know that you'll escort --

2 THE COURT: Did you hear what I said.

3 MS. NORA: Yes, but I --

4 THE COURT: Do I have to call the Marshals --

5 MS. NORA: -- I've got other --

6 THE COURT: -- to have you escorted --

7 MS. NORA: -- I've got other creditors for whom I'm
8 appearing today, so --

9 THE COURT: Look, did I just --

10 MS. NORA: -- I will sit down.

11 THE COURT: -- tell you what to do? Go sit down now I
12 will have you escorted from the courtroom.

13 MS. NORA: Thank you, Your Honor.

14 THE COURT: Go ahead, Mr. Lewis.

15 MR. LEWIS: Thank you, Your Honor; Adam Lewis of
16 Morrison & Foerster for the debtors. Obviously, Papas' claim
17 objection which is, I think, 4947, 1 through 3, on the docket
18 that was filed in -- on September 4th of this year. So there's
19 the objection; there's the Delehey declaration. Ms. Delehey is
20 here in the courtroom if the Court has any questions of her.

21 We have on the line Mr. Colt Dodrill, our local
22 counsel in Arizona. He's admitted pro hac in case you have
23 questions that might relate to the Arizona litigation that he's
24 better situated to answer.

25 Your Honor, I think this claim objection is pretty

1 simple, kind of no matter how you cut it. So Mr. Papas filed
2 his proof of claim, original proof of claim number 242 in July
3 of last year. And in that proof of claim, the face of the
4 claim is for ten billion dollars and Mr. Papas says it's for,
5 in box 2, based on fraudulent transfers of title by debtor. He
6 attaches a copy of the lis pendens that relates to the Arizona
7 litigation that describes in some respect what it's about, but
8 not very thoroughly. It doesn't tell you much. And then --
9 and so, our objection was filed and it essentially addresses
10 several points.

11 First of all, if you decide to look at the underlying
12 litigation in Arizona, you will see that the claims that are
13 made are made against GMACM, not against ResCap. This proof of
14 claim was filed against ResCap, and the Court's bar date order
15 specifically told creditors to file claims under the case
16 number of the debtor they seek to hold liable. That didn't
17 happen here. So on that basis alone, the Court should sustain
18 the objection because it was not filed as to GMACM.

19 Now, if you choose to move on from that point, the
20 next important point, I think, is that if you look at the
21 Arizona litigation, it's basically litigation about title,
22 wrongful foreclosure, and if you look at the underlying
23 complaint, it says --

24 THE COURT: Let me ask you this.

25 MR. LEWIS: Yes, Your Honor.

1 THE COURT: Tell me what the Arizona rule is with
2 respect to res judicata. And by that I mean -- because it's
3 not a final judgment in Arizona.

4 MR. LEWIS: In Arizona, for purposes -- and we cite
5 this in the brief -- in Arizona, for purposes of res judicata
6 and collateral estoppel, it doesn't have to be a final, final
7 order; it only has to be a final order at the trial. And if
8 it's on appeal, it is still considered a final order for
9 preclusion purposes.

10 THE COURT: All right.

11 MR. LEWIS: And --

12 THE COURT: And your argument is that the judgment in
13 Arizona, even though it's on appeal, is res judicata of the
14 claim that Mr. Papas has asserted here with respect to one of
15 what now is one of 114 properties, because he's tried to amend
16 the proof of claim to add another -- is it another 113 or
17 another 114?

18 MR. LEWIS: Another 114 --

19 THE COURT: Another 114.

20 MR. LEWIS: -- to the one --

21 THE COURT: Right.

22 MR. LEWIS: -- in Arizona. The other 114 are all over
23 the country. There are three more in Arizona and then others
24 elsewhere.

25 And the federal jurisprudence says that for purposes

1 of preclusion --

2 THE COURT: I apply to state --

3 MR. LEWIS: -- you look to state court --

4 THE COURT: I know. I know I apply state law --

5 MR. LEWIS: Okay.

6 THE COURT: -- with respect to the elements of res
7 judicata.

8 MR. LEWIS: So from our point of view, we have claim
9 preclusion, fact preclusion. And we have Rooker-Feldman which
10 we also discuss which says that a federal court cannot serve to
11 review final state court judgments, which is exactly what's
12 going on here, in effect, by the filing of the proof of claim
13 to restate these claims.

14 THE COURT: Well, I think res judicata, arguably,
15 disposes that -- Rooker-Feldman is not on the solidest ground
16 these days. Let's put it that way.

17 MR. LEWIS: Yeah. But we just wanted to put in all
18 the grounds that we thought were appropriate.

19 THE COURT: Yeah, okay, all right.

20 MR. LEWIS: And we think the res judicata and
21 collateral estoppel and Rooker-Feldman all apply.

22 Mr. --

23 THE COURT: So did the court in Arizona sanction Mr.
24 Papas?

25 MR. LEWIS: I think he's been found to be a

1 vexatious --

2 THE COURT: A vexatious litigant.

3 MR. LEWIS: -- litigant, yes.

4 So we filed that objection on the 4th. Mr. Papas
5 filed an amended -- a purported amended proof of claim on the
6 10th of September. That was filed with the clerk and it was
7 then recognized by KCC. And in that, the box 2 says, "Basis
8 for Claim: conversion of collateral, RICO fraud, interference
9 with contract", and has these additional 114 properties, but
10 does not otherwise describe the facts. So on its face, that
11 proof of claim is totally inadequate from a 12(b)(6), 8(a),
12 9(b)(2) point of view.

13 But on top of that, I think the amended proof of claim
14 has to be disregarded for one of two reasons. One, if you
15 apply -- if it is a permissible late amendment, then it has to
16 be about the same underlying facts as the original claim.

17 THE COURT: Not the additional 114 properties.

18 MR. LEWIS: Well, even putting that aside. Let's say
19 it was. The point here is that under those circumstances, the
20 same arguments of res judicata, collateral estoppel and Rooker-
21 Feldman would apply equally.

22 THE COURT: Well, why would it apply as to properties
23 in other states that were not litigated in Arizona?

24 MR. LEWIS: Your Honor, I'm not even conceding that.
25 I'm not conc -- all I'm saying is even if it did, res judicata

1 would apply. Now, the 114 states (sic) --

2 THE COURT: No, it would -- you would argue it would
3 apply as to the one that was the subject of the litigation in
4 Arizona?

5 MR. LEWIS: Clearly applies to that, yes.

6 THE COURT: And even if he attempted now to assert
7 additional causes of action that he didn't assert there, but
8 could have?

9 MR. LEWIS: Right. And as far as I'm concerned, if
10 you look at the test for whether you allow amendments, the test
11 is whether it relates to the underlying facts of the original
12 claim, and the answer is these don't. These are separate
13 pieces of property in other states, mostly, and as a
14 consequence, it's a late-filed claim; it should be disallowed
15 on that grounds alone, even if you were to consider the
16 amendment to the proof of claim.

17 So I think we kind of have Mr. Papas in a box. Either
18 way he turns, he's got himself a problem; either res judicata
19 and collateral estoppel, or a late-filed claim. And I might
20 note, the amended proof of claim also was filed against ResCap
21 and not against GMACM. That alone would be a reason to
22 disallow it, and it would be too late to file a claim now
23 against GMACM.

24 So I mean, we have some other arguments in the
25 objection. I know the Court is always prepared. I'm not going

1 to go through that unless you have further questions. These
2 are our main points; they're not our only points. But I think
3 the res judicata -- the claim preclusion, Rooker-Feldman takes
4 out the original proof of claim and anything in the amendment
5 that has to do with the original proof of claim. Anything in
6 the amendment which doesn't have to do with the original proof
7 of claim is late filed.

8 THE COURT: Okay. Let me hear from Ms. Nora.

9 MR. LEWIS: Thank you, Your Honor.

10 THE COURT: And I'll hear from Ms. Nora without -- I
11 want to make clear that she filed a notice of appearance with
12 respect to Mr. Papas reasonably recently. She did not seek pro
13 hac admission to represent Mr. Papas. I think the issue is
14 unclear whether she was admitted to represent anybody other
15 than herself.

16 I'll reserve that until the Court hears -- reads
17 papers and hears argument on the order to show cause. But for
18 today, I'm going to permit Ms. Nora to address specifically the
19 issues raised by the objection to claim.

20 MS. NORA: Thank you, Your Honor.

21 And in addition, I would like to call the Court's
22 attention to the fact that I have previously appeared for Mr.
23 Papas on a limited basis and also for another creditor in these
24 proceedings last year without objection from any party. So --
25 just in terms of the history which will be addressed on the

1 order to show cause.

2 With respect to Mr. Papas' claim on the ten billion
3 dollars that --

4 THE COURT: I'm not interested in the amount. I'm
5 interested in whether there's any basis for legal liability
6 that Mr. Papas has asserted in his claim.

7 MS. NORA: Yes, Your Honor. For ResCap as a
8 consolidated case, we are aware of the Court's bar date order.
9 However, the issue with respect to whether the claim properly
10 lies against ResCap, and we can prove that ResCap is the parent
11 of all fifty other subsidiaries -- I believe it's fifty --
12 wholly owning each and every one. Therefore, it is our
13 argument that a claim for the types of conduct that we are
14 asserting here properly lies against ResCap. To file it
15 otherwise would be to lead to duplicative claims; that would be
16 GMACM, we'd go through all of our records, Mr. Papas' records
17 as to who originated this. This claim from Massachusetts, for
18 example, could have been originated by Homecomings. We could
19 have something originated by a third party that was purchased
20 by one of the multiple debtors. But the point that we're
21 trying to raise here, Your Honor, is that we offer to prove to
22 this Court that all of the subsidiaries that have filed under
23 this consolidated case In re ResCap --

24 THE COURT: It's consolidated for purposes of
25 administration only.

1 MS. NORA: And for purposes of reorganization --

2 THE COURT: No. It's -- the order consolidated the
3 case for administration only, Ms. Nora. Go on with your
4 argument.

5 MS. NORA: Thank you, Your Honor.

6 It is the theory of Mr. Papas that the filing In re
7 ResCap put the debtors on notice of a category of claims which
8 they should have addressed. I will simply rely on our papers
9 with respect to disclosure, because the Court has --

10 THE COURT: Let me ask you this. Do you have any case
11 that supports your argument that filing a claim against the
12 parent company suffices to assert claims against all
13 subsidiaries or debtors' subsidiaries or affiliates? Do you
14 have any case that supports that argument?

15 MS. NORA: Not at this time, Your Honor. I believe --

16 THE COURT: Okay.

17 MS. NORA: -- that this case would be --

18 THE COURT: Again, you heard me before in another
19 argument --

20 MS. NORA: Yes.

21 THE COURT: -- now is the time and place for the
22 argument with respect to this. The debtors specifically raised
23 the issue that the claim was filed against the wrong entity.
24 And so when I ask you do you have any authority, the answer as
25 you stand here now and in the reply that you filed, you

1 identified no authority that would support your argument that a
2 claim against the parent is sufficient to assert a claim
3 against all subsidiaries and affiliates.

4 That's your argument. Am I understanding that
5 correctly?

6 MS. NORA: Your Honor, I believe that this is a unique
7 case.

8 THE COURT: Could you just answer my question?

9 MS. NORA: It is an experiment in the law --

10 THE COURT: Do you have any case authority?

11 MS. NORA: It should arise from the determination --

12 THE COURT: Do you have any --

13 MS. NORA: -- in this case.

14 THE COURT: -- case authority --

15 MS. NORA: Not historically.

16 THE COURT: All right. Go on with your -- I'd like
17 you to address the issue of why res judicata from the Arizona
18 action does not bar the claim -- let's deal with the original
19 claim.

20 MS. NORA: Thank you, Your Honor.

21 We are taking the word of Arizona counsel and federal
22 interpretation of lower-level state court cases as establishing
23 this res judicata standard.

24 THE COURT: Do you have any case authority that
25 Arizona does not apply res judicata to a nonfinal judgment of a

1 lower court in Arizona?

2 MS. NORA: No; it needs to be reversed, Your Honor.

3 THE COURT: Oh, okay.

4 MS. NORA: And it is pending on appeal.

5 THE COURT: And -- all right. So you acknowledge that
6 all existing cases in Arizona, all existing reported cases in
7 Arizona, apply res judicata to nonfinal decisions of the courts
8 in Arizona? Correct?

9 MS. NORA: Well, I think you're trying to say final
10 decisions of lower courts.

11 THE COURT: Yes, I am.

12 MS. NORA: Thank you.

13 THE COURT: And do you agree with that? That all
14 decisions, all appellate decisions in Arizona apply res
15 judicata to final decisions of lower courts in Arizona? Do you
16 agree?

17 MS. NORA: No. I don't think that's correct.

18 THE COURT: So give me a cite that shows that wrong.

19 MS. NORA: Well, I -- what the Court offered as a
20 proposition was that all appellate courts in Arizona consider
21 the lower courts' ruling as res judicata, and since they're
22 appellate courts, they would be reviewing those lower court
23 decisions to see whether they would be reversed.

24 THE COURT: Ms. Nora, do you have any cases that
25 support your argument?

1 MS. NORA: The standard for this is if the order --

2 THE COURT: Ms. Nora --

3 MS. NORA: -- entered at the trial could --

4 THE COURT: Stop. Stop, Ms. Nora.

5 I'm asking you a very specific question. When I ask a
6 specific question, I wish to have an answer to my question.

7 Can you cite to me now as you stand there any case authority
8 from Arizona that applies a res judicata rule other than as
9 stated by Mr. Lewis? Yes or no?

10 MS. NORA: I don't believe that the debtors were
11 relying on the Arizona rule; I believe they were relying on the
12 federal --

13 THE COURT: Okay. I've heard all I want to hear from
14 you. You do not answer the questions that the Court
15 specifically asks you. When counsel appears before me and I
16 ask them direct questions, I expect a direct answer.

17 I'm going to give you one last chance. If you don't
18 answer my question directly, your argument is concluded. Do
19 you understand that?

20 MS. NORA: Yes, Your Honor.

21 THE COURT: Can you cite to me any Arizona case
22 authority that says that a final judgment of a lower court in
23 Arizona should not be treated as res judicata? Yes or --

24 MS. NORA: I don't believe such case law exists.

25 THE COURT: All right. Okay, go on with your

1 argument.

2 MS. NORA: Now, Your Honor, the reason that the claim
3 was amended is using the standard that this Court is
4 applying -- that a motion-to-dismiss standard will apply -- is
5 we don't have any time frame for amendment of these claims.
6 The debtors are relying on the date of filing of the --

7 THE COURT: There was a bar --

8 MS. NORA: -- Chapter Thirt --

9 THE COURT: There was a bar date --

10 MS. NORA: -- Chapter 11 plan --

11 THE COURT: -- in this case. You acknowledge there
12 was a bar date?

13 MS. NORA: Yes, Your Honor.

14 THE COURT: And it's long since run. What is your
15 understanding of the applicable authority in this circuit with
16 respect to whether an amended claim relates back to the
17 original filed claim?

18 MS. NORA: I believe that it was well stated by the
19 debtors. It has to do with the same factual nexus. The
20 factual nexus in this case is MERS, Mortgage Electronic
21 Registration Systems, being the claimed beneficiary on deeds of
22 trust or being the nominee of the mortgages. And this is Mr.
23 Papas' contention on behalf of all of the parties -- all of the
24 properties in which he has an interest, which he did note in
25 claim number 242. He said here's an example, the Arizona case.

1 But he has always had this list of properties. He tells me the
2 debtors have been aware of the list of properties from
3 combating him in various forums, and that this is no secret to
4 the debtors.

5 THE COURT: Do you agree that Mr. Papas has been
6 determined to be a vexatious litigant in prior cases?

7 MS. NORA: I do not agree with that.

8 THE COURT: Okay.

9 MS. NORA: I understand he was sanctioned for bringing
10 something to the attention of the Arizona court which is on
11 appeal. But this idea of friv -- frivolous is one instance;
12 vexatious is repetitive. And he has appealed from that
13 frivolous sanction, and I don't believe it's been enforced
14 against him. And, in fact, I think it had something to do with
15 proceeding where the automatic stay in this court was in
16 effect. But that's my understanding. I think he's on the
17 phone in listen mode and would be prepared to make an offer of
18 proof with respect to his status on that one Arizona case.

19 THE COURT: All right. Anything else you're going to
20 argue?

21 MS. NORA: I believe that the amendment is timely on
22 the basis that it pertains to the same factual nexus which is
23 the use of Mortgage Electronic Registration Systems, which we
24 would also offer to prove is an electronic database that does
25 not have any employees which has resulted in the creation of

1 forged mortgage assignments throughout the nation. And that is
2 the basis for the RICO. And I can address the standards of
3 RICO if Your Honor would like.

4 THE COURT: No. The issue is whether your claim --
5 whether the amended claim adding 114 properties relates back to
6 the original filing. That's the issue for today.

7 MS. NORA: I have stated that we believe that the
8 factual nexus --

9 THE COURT: All right.

10 MS. NORA: -- is the same.

11 THE COURT: I have your argument.

12 MS. NORA: Thank you, Your Honor.

13 THE COURT: Mr. Lewis, do you wish to respond briefly?

14 MR. LEWIS: Just a few points, Your Honor. Thank you.

15 First of all, in terms of the violation of the stay
16 issue, the litigation continued in Arizona because of paragraph
17 14(a) of the procedures order which allowed litigation over
18 titles and foreclosures to proceed. That's why it went
19 forward.

20 Mr. Dodrill can probably answer that even better than
21 I --

22 THE COURT: No, I'm aware of that.

23 MR. LEWIS: Okay.

24 The other thing -- one more thing I want to say here
25 is that the response does not address the objection at all.

1 THE COURT: It went off in every conceivable
2 direction --

3 MR. LEWIS: Pretty --

4 THE COURT: -- other than responding --

5 MR. LEWIS: Yeah.

6 THE COURT: -- to the objection.

7 MR. LEWIS: Right. So on that ground alone --

8 THE COURT: It is that -- that is the reason, frankly,
9 that the Court is going to enter the order to show cause why
10 Ms. Nora's pro hac vice admission is unclear of -- certainly
11 for herself, and she'll be permitted to continue for herself,
12 but for anyone else, this is a frivolous pleading in my view,
13 the reply, the extent it goes off in every tangent possible
14 other than addressing the issues raised in the debtors' papers.

15 MR. LEWIS: Your Honor, my final point is I thought I
16 heard Ms. Nora say -- suggest that the amendment somehow
17 relates to the original proof of claim because the original
18 proof of claim said the property concerned there was an example
19 of what -- that would be pretty cryptic to begin with. But if
20 you look at the original proof of claim, there's no talking
21 about its being an example of anything. There's only one
22 property mentioned. There's no suggestion that there are any
23 other properties of concern. And so it clearly does not
24 relate.

25 THE COURT: Address her argument that the amendment is

1 timely because it relates to the same conduct by MERS.

2 MR. LEWIS: The conduct by MERS is not the subject
3 matter of the original proof of claim. The original proof of
4 claim, if you look at the underlying complaint -- if you go
5 that far because it's not attached to the proof of claim
6 itself -- the allegations are against GMACM. And in any event,
7 114 different properties are 114 claims or sets of claims. And
8 while there may be a common pattern of conduct alleged as to
9 them, that doesn't make it relate to the original claim.

10 THE COURT: Okay. Have the debtors engaged in
11 litigation with Mr. Papas elsewhere in the country?

12 MR. LEWIS: I don't -- other than the appeal, I don't
13 believe so.

14 THE COURT: Has he filed lis pendens on other property
15 in other states, do you know?

16 MR. LEWIS: I don't know the answer to that. We did
17 make an attempt to find all these other properties and produced
18 this massive spreadsheet, some of which we were able to find
19 and some of which we weren't. I can try to get the Court an
20 answer to that question --

21 THE COURT: That's all right.

22 All right. I'm going to take the matter under
23 submission.

24 MR. LEWIS: Thank you, Your Honor.

25 May I ask a question --

1 THE COURT: Yeah, sure.

2 MR. LEWIS: We attached a form of order, of course,
3 when we filed the objection. The amended proof of claim is
4 something I think the Court will end up dealing with in some
5 fashion or another in ruling, or it may. And if it does, then
6 perhaps we need to submit --

7 THE COURT: I don't need anything else.

8 MR. LEWIS: Okay.

9 THE COURT: I -- it'll be addressed in an opinion.

10 MR. LEWIS: Okay. It would just -- something to
11 reflect --

12 THE COURT: I don't need anything else.

13 MR. LEWIS: Okay. All right.

14 THE COURT: The issue of the amended claim is dealt
15 with in Ms. Nora's reply and you've adequately dealt with it.

16 MR. LEWIS: Okay. Thank you, Your Honor.

17 THE COURT: Okay.

18 What's next?

19 MR. WISHNEW: Your Honor, Jordan Wishnew, Morrison &
20 Foerster for the debtors.

21 That brings us to the next contested claims matter
22 which is a matter of twenty-second omnibus objection. There
23 are two claims being --

24 THE COURT: What page of the agenda?

25 MR. WISHNEW: I'm sorry, Your Honor; page 20.

1 THE COURT: Go ahead.

2 MR. WISHNEW: In the middle of the page, there are two
3 responses; Alicia and George Davis (ph.) and William C. and
4 Keiran Walker. We intend to address the Davis claim and then
5 the Walker claim and then proceed onto the next docketed
6 matter.

7 THE COURT: Go ahead.

8 Well, is anyone appearing for the claimants?

9 MR. WALKER: Yes, William C. Walker representing
10 himself and his wife. And it's pronounced Karen; it's spelled
11 funny.

12 THE COURT: All right. Anybody else on the phone?

13 MR. WALKER: I can barely hear you.

14 THE COURT: Is there anyone else on the phone
15 appearing for any of the claimants with respect to the -- I
16 guess this is what, the twentieth (sic) omnibus objection?

17 All right. Mr. Walker, I'll hear from you after Mr.
18 Wishnew addresses the Court.

19 MR. WALKER: All right, thank you.

20 MR. WISHNEW: Thank you, Your Honor.

21 So, George Davis deals with claim number 3443.
22 Specifically, this is a claim in the amount of approximately
23 358,000 dollars. All this is a secured claim against GMAC
24 Mortgage, the stated basis of which is a mortgage note.

25 The concern of the claimant is that he tried to pay a

1 portion of his mortgage arrears and did not succeed and has
2 purportedly been damaged. Again, the claim amount appears to
3 be for the outstanding balance on the mortgage. And in order
4 to address his concerns about his denial of a loan
5 modification, and considering the Court's earlier guidance, we
6 did put in a supplemental declaration of Deanna Horst from the
7 debtor. And Ms. Horst is in the courtroom today should the
8 Court have any questions.

9 We basically say with regard to Mr. Davis' claim, we
10 believe that there has not been a valid claim stated against
11 the debtor here. The debtor had made nine separate attempts
12 between 2009 and 2012 to work out a loan modification with Mr.
13 Davis. The loan has been due since November 2010 and the
14 reasons for the failed workouts were either he could not
15 satisfy the guidelines under HAMP, but it is the debtors'
16 position that they acted properly during that time period to
17 try and accommodate Mr. Davis. But unfortunately, we could not
18 reach an acceptable resolution that would allow for a loan
19 modification.

20 It's therefore our position that the claim should be
21 disallowed because there is not a colorable claim against the
22 debtor based on their dealings with this claimant.

23 THE COURT: Is anybody appearing for Mr. Davis?

24 With respect to -- there was -- Mr. Davis submitted
25 seven loan modification applications. Five were denied for

1 incomplete documentation; one was denied because it didn't
2 comply with HAMP; and one was approved for trial modification.
3 Did Mr. Davis countersign a -- I guess, what's the term that
4 applies to it; it would be -- just bear with me. He entered
5 into a trial plan, correct?

6 MR. WISHNEW: Correct, Your Honor.

7 THE COURT: And did he countersign the document that
8 set forth the terms of the trial plan?

9 MR. WISHNEW: Yes, he did, Your Honor. I would also
10 add with regards to the trial plan, that was approved and was
11 countersigned. It's our -- our records reflect that it did not
12 go through because he did not make that first trial payment.

13 THE COURT: Well, that's a different issue.

14 MR. WISHNEW: Okay.

15 THE COURT: Okay? The -- in the evidence that the
16 debtor submitted, am I correct that you've indicated that Mr.
17 Davis did enter into a trial plan and your evidence would
18 establish that he failed to make payments that were required in
19 the trial plan? Is that a fair statement?

20 MR. WISHNEW: That is correct, Your Honor.

21 THE COURT: And what happened after -- what, if
22 anything, happened after the trial plan, which is a contract,
23 was entered into and he failed to perform?

24 MR. WISHNEW: Sure, Your Honor. So if -- what we're
25 talking about -- I think it's between seven and nine packages.

1 The trial plan was approved in June 2011 but cancelled
2 September 2nd because, as we mentioned, the failure to make the
3 payment. Subsequent to that, there was a sixth application
4 that was denied on December 28th, 2011, because GMAC Mortgage
5 could not reduce the mortgage payment to an acceptable level,
6 more specifically, that the HAMP's requirements of the modified
7 mortgage payment be no greater than thirty-one percent of the
8 borrower's total income, and in light of where his income was,
9 the numbers just were not working so that we could do a
10 modification.

11 So there were subsequent efforts to try again, but
12 frankly, the borrower's income was not enough to do another
13 modification.

14 THE COURT: Did the debtors deny a subsequent HAMP
15 modification because of Davis' failure to meet -- is it because
16 the failure to meet the thirty-one percent income -- the ratio
17 of payments to his income?

18 MR. WISHNEW: That's correct, Your Honor.

19 THE COURT: All right. I'm going to take the Davis
20 matter under submission.

21 MR. WISHNEW: Thank you, Your Honor.

22 The next matter --

23 THE COURT: Just bear with me for a second, Mr.
24 Wishnew.

25 MR. WISHNEW: Sure.

1 THE COURT: All right, go ahead.

2 MR. WISHNEW: The next matter with regards to the
3 twenty-second omnibus deals with claim number 5529, filed by
4 William C. Walker and Keiran J. Walker. This deals with a
5 402,000 dollar unsecured claim against Residential Capital, the
6 stated basis of which is a mortgage loan.

7 As best we could understand, the concern is that they
8 felt they were being -- they were getting a two-percent loan
9 modification but instead they received -- and I emphasize the
10 word, they did receive -- a four percent -- a modification that
11 adjusted their mortgage payment or mortgage interest rate from
12 six and one-eighth to four percent, with --

13 THE COURT: Was there a trial plan that was signed by
14 both parties?

15 MR. WISHNEW: Yes, Your Honor. That was being done --
16 the claimants were approved for a permanent HAMP modification
17 on September 13th, 2010.

18 THE COURT: Well, let me stop. So they went through
19 the trial period and successfully completed the trial period?

20 MR. WISHNEW: That's my understanding, Your Honor,
21 yes.

22 THE COURT: And they were approved for a final
23 modification based on the successful completion of the trial
24 period?

25 MR. WISHNEW: That was my understanding, Your Honor,

1 yes.

2 THE COURT: And the documents in connection with both
3 the trial plan -- let me ask you this. Was there any -- was
4 the final modification that was approved also signed?

5 MR. WISHNEW: Yes, Your Honor.

6 THE COURT: By the Walkers?

7 MR. WISHNEW: Yes, Your Honor.

8 THE COURT: And did it set forth what the interest
9 rate would be?

10 MR. WISHNEW: Yes, Your Honor.

11 THE COURT: And what interest rate did it provide?

12 MR. WISHNEW: Four percent.

13 THE COURT: And what happened after that?

14 MR. WISHNEW: After that, the debtors then -- I'm
15 sorry, the claimants sought subsequent HAMP modifications on
16 May 16th, 2011 and August 22nd, 2011. They were denied those
17 modifications because they had already received the prior HAMP
18 modification in 2010. In both instances, the company, GMAC
19 Mortgage, advised or spoke with the claimants about the
20 modification denials, so there was certainly full disclosure as
21 to why it was that subsequent modifications were denied.

22 THE COURT: All right. Anything else you wanted?

23 MR. WISHNEW: Nothing more, Your Honor.

24 THE COURT: All right. Mr. Walker, do you want to
25 address the issues?

1 MR. WALKER: Yes, I'd like to, Your Honor.

2 THE COURT: Go ahead, please.

3 MR. WALKER: I don't know what else you need there.
4 I'm sixty-nine years old, started the process when I was sixty-
5 five. We have lost a huge amount of money in equity in our
6 home; home's upside down. In 2009, we were listening to the
7 radio, we heard all these things about special programs, so we
8 decided we'd call. We ended up talking to GMAC, who sent us
9 all this stuff. We qualified for -- they thought we would be
10 as low as a two percent or -- I mean, four percent -- they
11 promised us they'd give us a particular amount of loan.

12 THE COURT: I'm sorry, you say they did or didn't
13 promise a specific modification?

14 MR. WALKER: They did not promise us.

15 THE COURT: Okay.

16 MR. WALKER: They indicated in their paperwork they
17 did, but they did not promise us at that time --

18 THE COURT: Okay. Go ahead.

19 MR. WALKER: -- we would set up a particular kind of a
20 loan, or we get any kind of a loan, to be honest with you. We
21 ended up getting some notification; we talked to them several
22 times on the phone. They told us that we'd be getting some
23 paperwork, that we were going to get a four-percent loan.

24 I told them that that would not be enough under our
25 circumstances. My wife is turning sixty-two and planning to

1 retire and get on Social Security. They wouldn't accept those
2 figures for our income, and I understand that. They wouldn't
3 accept mine because I have a reduced income and had retired.
4 So we ended up complaining and telling them it just wasn't
5 going to be enough. And they said don't worry about it -- this
6 is GMAC -- they told us many, many times there's going to be a
7 lot of other programs, Mr. Walker, just accept this thing,
8 don't worry about it, take this loan and you can go down in the
9 future. Well, we -- if you look at the papers when we talked
10 to them originally, they told us that this four-percent loan
11 would include our taxes and insurance. And when I called back
12 to question it, they told me, I'm sorry, Mr. Walker, you live
13 in California, we can't do it. And I thought that's
14 ridiculous; we -- no one told us that we had to do something
15 special or anything else, they just told us it was going to be
16 included and it wasn't.

17 Can I go on?

18 THE COURT: Yes, go ahead.

19 MR. WALKER: What happened then was we struggled
20 along, we called and they still -- they kept telling us, as we
21 were having difficulty making our payments, we were selling our
22 personal property, cashed in our 401(k)s, cashed in our life
23 insurance, I sold a boat, a trailer, a whole bunch of different
24 things. In any event -- personal property, gold our personal
25 jewelry except our wedding rings, and so on.

1 We -- the people were very nice when we talked to
2 them, but bottom line is they kept telling us there'd be other
3 programs. So they would send us these -- the documentations to
4 fill out. We filled them out and you can see we filled them
5 out on -- for the 5/17 denial, and what they told us was that
6 there was a new program, and to go ahead and submit the papers
7 again. So we did.

8 So then on -- when we got the denial thing, I called
9 and they told me gee, I'm so sorry, there's not a program that
10 fits for you. They didn't go into any more detail than that,
11 although I asked. In any event, the next time they told us
12 that you had to wait a year to file the claim. So we went
13 ahead and -- I think our thing was filed in September of 2009,
14 so in 2010 we filed the papers in August, which is what they
15 told us to do. Again, they told us the same thing, there's no
16 new program and it's been about a year. I said well, what are
17 we talking about? And they said well, you had to wait a year
18 before you could resubmit for the loan, but --

19 THE COURT: May I ask you this, Mr. Walker? And I
20 asked Mr. Wishnew this. Is it correct that you were provided
21 with a written document for a trial plan and you countersigned
22 that document and returned it to one of the debtors? Is that
23 correct?

24 MR. WALKER: Absolutely correct.

25 THE COURT: Okay.

1 MR. WISHNEW: We took the four-percent loan --

2 THE COURT: Right.

3 MR. WALKER: -- with the understanding that the other
4 programs was what they told us. And --

5 THE COURT: All right. Let me just ask another
6 question. Is it also correct that you went through the ninety
7 days of the trial plan and were granted a final modification on
8 terms stated in a written agreement which you also
9 countersigned?

10 MR. WALKER: Yes, absolutely.

11 THE COURT: Okay.

12 MR. WALKER: Again, with the understanding that there
13 were going to be other programs, and that's what they told us.

14 THE COURT: All right. Go ahead with your argument.

15 MR. WALKER: So we ended up getting these denial
16 letters, and of course in the denial letters it wasn't -- you
17 know, it wasn't as clear as they'd like us to believe. They
18 told us that we -- there was a -- we didn't meet any new
19 HAMP -- not new HAMP, but the HAMP requirements. And again, we
20 went through the whole process several times, and they kept
21 telling us there'd be new programs.

22 Finally, a woman at GMAC said you know what, they've
23 been misleading you, Mr. Walker, they've been -- there is --
24 there's only one bite at the apple and that was done in, I
25 believe, September of that year, or the end of the year,

1 anyway, after we complained. And they said whoever told you
2 there was going to be other programs and you'd be qualified,
3 they misled you or lied to you. And that happened several
4 times.

5 We have been -- we have given -- we have been
6 presented with dozens of the loan modification applications
7 from GMAC; they knew from the start that we were not going to
8 ever qualify for it, but they never told us. So when we were
9 being misled, of course, we kept selling our personal property
10 to stay in our home. I even put taxes on our credit cards.
11 We'd have never done something like that. My wife stayed
12 employed as a waitress at sixty-two so we could stay in our
13 home.

14 THE COURT: May I ask you this, sir, are you still in
15 the house now?

16 MR. WALKER: Yes, sir, we are.

17 THE COURT: All right.

18 MR. WALKER: We're behind certain days in our payment
19 to Ocwen. And of course, GMAC before they filed bankruptcy,
20 they told us to file bankruptcy just to pay them. And we -- I
21 couldn't believe it. But in any event, they finally told us to
22 stop paying our house payment; then we could, in fact, qualify
23 for a new loan. But the only way we could get out of the
24 situation we were in -- we were never going to get a new loan,
25 and, of course, you heard me tell you that was the first bite

1 at the apple thing, first time we'd ever heard it.

2 So when they told us that we were never going to get
3 another loan and all this stuff, I kind of thought, well, maybe
4 we better stop paying our payment. I talked to several
5 attorneys, even to represent us in this case it's 10,000
6 dollars, a payment I couldn't afford, so that's why I'm talking
7 on the phone myself.

8 I don't know what else to do, just tell you what
9 happened. But bottom line is they told us that -- basically,
10 they told us to stop paying our house payment. We ended up
11 talking to several people, several of these lawyers, and all
12 these different companies that say they can save your house and
13 what mortgage thing and so on. We ended up going to -- just
14 being honest and telling people what the circumstances were and
15 they ended up -- hang on just one second. I'm going to have a
16 sip of water.

17 THE COURT: Yep. Go ahead, Mr. Walker.

18 MR. WALKER: Thank you, I'm sorry. When we got --
19 when we ended up with Ocwen finally telling us the same thing,
20 were the same company, the same people.

21 Laura King was our -- I don't know what she was, but
22 Mike Vias (ph.), I mean, there's several different names, I
23 have their first and last name. Most of the time we'd call,
24 we'd always get a different person. We'd always -- whenever
25 we'd call -- I tried to document the calls, they said they were

1 recording every call. I asked for all of the phone calls to
2 be -- even if I have to pay to have them transcribe -- get them
3 transcribed, I said I need the calls. You guys are telling me
4 one thing, you're doing something else. You know, we're
5 spilling our life savings and everything else, things that I
6 paid for dearly over the years. And, of course, everything's
7 gone. We've got our wedding rings, and we've still got our
8 home, we've got furniture. But everything else, the toys, are
9 gone. And that's okay, we're -- my wife now is sixty-six. And
10 like I said, she was going to retire in 2000- -- what was it
11 in, in 2010 when she turned sixty-two, but bottom line is we --
12 because of this situation we couldn't do that. And more than
13 that, we have lost a huge amount of equity in our home. So
14 what we were relying on to be our nest egg was gone. So we
15 lost all kinds of things.

16 It doesn't matter. The point is we were misled by the
17 company, they continually lied to us up until finally, I
18 believe it was Mrs. King, told us hey, they misled you, they
19 lied to you, there's not going to be in the program, you're out
20 of luck. And that's when, of course, GMAC told me -- finally,
21 they told us they were going to go bankrupt. We got a notice
22 from the company saying they were going bankrupt. I wrote a
23 letter -- not a letter, I called; they said you're not
24 qualified, you're not going to be able to do anything with
25 this, you're wasting your time, don't bother submitting the

1 paperwork.

2 I waited till the very last and talking to my wife,
3 and she's crying her eyes out at night just because of this
4 situation. And we end up filing the papers.

5 THE COURT: All right.

6 MR. WALKER: I ended up the total amount at that time
7 that I had was 400-and-some thousand dollars. And we're trying
8 to put all that stuff together; we put all of our stuff in
9 storage. I had my grandson help me; the stuff got shuffled
10 around a little bit. Bottom line is I couldn't come up with
11 all the information for the stuff -- for the actual amount that
12 we think we're owed.

13 THE COURT: Let me ask you this, Mr. Walker. Are you
14 currently -- are you currently applying for a loan modification
15 with Ocwen, which is servicing your loan now?

16 MR. WALKER: We've done that, but they told us the
17 same thing.

18 THE COURT: Okay.

19 MR. WALKER: They said the only way you're going to
20 get a loan modification is to stop paying your house payment.
21 And I stopped paying it for a few months, but I got these nasty
22 letters telling me that they were going to foreclose on our
23 home. And I thought wait a minute, so I called and they said
24 well, there's no guarantee, you know, if you get out of the
25 HAMP loan, you're going to get another one. And I said well,

1 the change -- my wife is now officially retired. She was going
2 to retire, like I said, when she's sixty-two, but now she is at
3 sixty-five, July 1st it was her birthday, July 4 was our forty-
4 seventh wedding anniversary and our life has been a dream up
5 until the last two years, three years. And then everything's
6 just falling apart.

7 And, I mean, we're not -- we're not desperate people,
8 but we're not doing all the things we had dreamed about. So
9 those things are -- I can't help my grandkids, I can't even
10 travel to see them, to go to their sports and so on. And a lot
11 of it is because of GMAC's lies to us, continually telling us,
12 there's going to be other programs, don't worry about it, and,
13 of course, when it finally came out that they lied, there we
14 sit.

15 And, of course, I feel like a fool, but the bottom
16 line is that they committed -- as far as I'm concerned, they
17 committed fraud. I called our District Attorney's office, they
18 said I'm sorry, Mr. Walker, that's a civil matter, you're out
19 of luck.

20 So I thought, well, where am I going to go? So I
21 called a couple of attorneys and those companies that say
22 they're going to save your home; all they want to do is they
23 want to take -- have you send the money to them that you're
24 going to pay your house payment with and then they try to
25 negotiate whatever they do it. And I said well, wait a minute,

1 I can do that myself.

2 Anyway, that's the --

3 THE COURT: All right.

4 MR. WALKER: -- facts of it. I don't know what else
5 to tell you, Your Honor, except that this is wrong. We -- I
6 mean, I can probably come out with a little tighter amount of
7 money that we've actually been, you know, tightened out of or
8 screwed out of, but I understand after listening to you and the
9 court process of those other folks, I'm humbled after listening
10 to it. But I can't believe they did what they did to us. And
11 I --

12 THE COURT: All right. Mr. Walker, the issue from the
13 Court's standpoint is whether the proof of claim that you
14 filed -- and I recognize you don't have a lawyer -- whether the
15 proof of claim you had filed asserts a legally supportable
16 claim against any of the debtors. And I understand -- I've
17 listened to you, and I've read the papers, so I think I
18 understand the facts. I'm going to ask Mr. Wishnew, who's
19 arguing on behalf of the debtors, a few questions now. Okay?

20 MR. WALKER: Sure, thank you.

21 THE COURT: All right, thank you.

22 So Mr. Wishnew, one of the -- I guess the question I
23 have is whether a borrower may assert a claim, or if it was
24 outside of bankruptcy, assert a cause of action in a lawsuit
25 for wrongful denial of a loan modification, and if so, what are

1 the elements of such a claim or cause of action?

2 So in the cases I've read, there's a recent First
3 Circuit case, Young v. Wells Fargo, that really primarily deals
4 with -- this is breach of contract claim, where there was a
5 trial plan, and the argument -- and, actually, the First
6 Circuit affirmed in part and reversed in part the trial court's
7 dismissal of the complaint in that case. They asserted a
8 variety of causes of action. And it reversed, in part, as to a
9 breach of contract claim, but that hinges on an alleged breach
10 of contract; there it was a trial plan.

11 You know, it's an area where lawyers are increasingly
12 trying to sort of test the limits of what properly states a
13 cause of action. And so one question I have is whether -- what
14 is -- I want you to address the issue of whether courts have
15 recognized a cause of action for wrongful denial of a loan
16 modification.

17 Here, Mr. Walker asserts that representatives of the
18 debtor verbally told him that there were going to be new
19 programs, that there could be a further modification, et
20 cetera, and that that didn't come to pass. So what is the
21 debtors' view as to whether that states a cause of action for
22 breach of contract, negligent misrepresentation? I'm not even
23 going to go to the issue of fraud.

24 For example, do those facts raise -- and for me the
25 issue is does it raise a contested matter as to whether the

1 Walkers have asserted facts that support a claim for negligent
2 misrepresentation against the debtors in connection with the
3 denial here of a further loan modification. Mr. Walker
4 acknowledges that they did get a trial plan, and they got a
5 final modification based on that. He indicates that they
6 subsequently -- the rates in that were too high for them to be
7 able to afford, although they're still in the house. And so
8 the issue is whether statements by agents or representatives of
9 the debtor would give rise to a cause of action for negligent
10 misrepresentation or another theory. What's the debtors' view
11 about that?

12 MR. WISHNEW: Your Honor, it's the debtors' view that
13 the facts as they are before the Court would not give rise to
14 such a cause of action for negligent misrepresentation or
15 breach of contract. I mean, these were conversations between,
16 you know, presumably an employee of GMAC Mortgage and the
17 borrower simply making an inquiry. And there would not be --
18 the loan modification would have basically -- I'm not aware of
19 anything in the loan modification that would have promised some
20 sort of further relief that they asked for a loan mod, they got
21 the loan mod, it was approved at four percent, and whether or
22 not there was an opportunity for a further modification is not
23 something that the debtor would have promised to them, or there
24 would have been --

25 THE COURT: That goes to an issue of disputed facts,

1 or contested facts. And the issue is what's the Court supposed
2 to do on your objection to the claim? I'm dealing with pro se
3 parties; that's why I let Mr. Walker lay out --

4 MR. WISHNEW: Of course, Your Honor.

5 THE COURT: -- the facts. I didn't see -- and maybe
6 you can point me to this, I didn't really see in your papers
7 where you addressed the issue of -- the elements of claims
8 for wrongful denial of a loan modification. Clearly, they got
9 the first -- they got a trial plan, they got a final loan
10 modification, and the issue that Mr. Walker raises -- he
11 acknowledges he got it, four percent, didn't think he'd be able
12 to meet that, but he had -- I mean, in his -- I'm not saying --
13 I'm not finding any facts whatsoever at this point, but I think
14 a fair interpretation of what he says is he was promised,
15 assured -- maybe it didn't rise to that level; I don't know --
16 that there could be a further modification. You acknowledge
17 that he applied for further modification and was turned down.

18 MR. WISHNEW: That's correct, Your Honor, yes.

19 THE COURT: I don't know whether GMAC -- you know, the
20 Walkers may not have qualified for a HAMP modification, but,
21 you know, the Court's experience, particularly when I had the
22 Chapter 13 calendar, is that a bunch of the financial
23 institutions in addition to evaluating a potential HAMP
24 modification, they typically had their own programs, as well.
25 And so even if someone didn't qualify for a HAMP modification

1 there'd be consideration whether some other basis would occur.
2 But I don't -- you agree you didn't address this issue of --
3 it's kind of in a burgeoning area and --

4 MR. WISHNEW: I would recognize that neither in the
5 objection or the reply did we specifically address whether
6 there is a cause of action for wrongful denial of a loan
7 modification.

8 THE COURT: Let me ask Mr. Nosek, who's special
9 borrower's --

10 MR. WALKER: Hello.

11 THE COURT: -- counsel for the committee. Does the
12 committee have a view --

13 MR. WALKER: I can't hear you.

14 THE COURT: I'm sorry, Mr. Walker. I'm asking Mr.
15 Nosek or one of his colleagues, who are special borrower's
16 counsel. They rep -- they're counsel to the creditors'
17 committee for borrowers. They don't represent you
18 specifically, Mr. Walker, but the special borrower's counsel
19 really is there to try and address from the Court's standpoint
20 some of these issues of what would be a valid claim against the
21 debtor.

22 You know, I cited the one First Circuit case; there
23 are additional cases as well that explore the issue of
24 potential claims. I'm describing it as wrongful denial of a
25 loan modification; they may apply different terms to it. Mr.

1 Nosek, does the --

2 MR. WALKER: Can I interject, this is Mr. Walker
3 again.

4 THE COURT: Just hand on a second, Mr. Walker, let me
5 get an answer from Mr. Nosek or one of his colleagues. If you
6 don't have an answer today, that's fine.

7 MR. NOSEK: Your Honor, I do not have a specific
8 answer for you today, but we can obviously --

9 THE COURT: You have to speak into the microphone,
10 because otherwise we're not going to get a complete record.
11 Karen keeps me honest here. No, it's okay. I'm sorry.

12 MR. NOSEK: Sorry, Your Honor. Robert Nosek, special
13 borrower's counsel.

14 THE COURT: Okay.

15 MR. NOSEK: We do not have a specific response to you
16 today; we can, certainly immediately begin looking at that
17 issue. We do have a person on the phone in the office, and we
18 can begin to get an answer --

19 THE COURT: Okay.

20 MR. NOSEK: -- for you.

21 THE COURT: Okay. All right.

22 MR. NOSEK: It didn't come up par -- we did speak with
23 Mr. Walker briefly yesterday --

24 THE COURT: Yes.

25 MR. NOSEK: -- I believe, but he chose to go -- you

1 know, go forward and then --

2 THE COURT: Yes, I understand. Okay.

3 MR. NOSEK: We're happy to look into it, Your Honor.

4 THE COURT: So the only issue for me today, frankly,
5 is -- not the only issue, but the main issue for me today is
6 whether this is sufficiently clear on its face that I would
7 sustain the debtors' objection to the claim and expunge it, or
8 whether, at least for today, I determine it to be a contested
9 matter, set it down. When I said earlier today that I wanted
10 to see the order that dealt with particularly the focus on loan
11 modifications, this was one of those that I specifically had in
12 mind.

13 But I want to give Mr. Walker a chance. You wanted to
14 say something else go ahead.

15 MR. WALKER: Yes, sir. I appreciate it, thank you.

16 William C. Walker. We didn't generate the information
17 that was sent to us from GMAC to reapply for these loans with
18 the understanding we already knew and they knew we already had
19 this HAMP loan, to be honest with you. They know we did. They
20 gave us the information with the understanding, and our
21 understanding with them, that they were sending this stuff to
22 us again to fill out, which is monumental, which I filled out
23 again myself, with the hardship letters and all the
24 documentation. And of course, when you look at the income tax,
25 and I talked about that -- I was selling personal property and

1 declaring it as income, which was ridiculous. I had the gold,
2 the trailer, all of those different things. But in any event,
3 besides all the -- that part of it which is personal to me, I
4 didn't generate the information that they sent me to get the --
5 to get another loan; they did. They were the ones that told me
6 there was a new program --

7 THE COURT: Okay.

8 MR. WALKER: -- submit the stuff, there's going to be
9 a new opportunity.

10 THE COURT: Mr. Walker, I'm going to interrupt you now
11 only because what I'm going to do is adjourn this matter.

12 You may have heard -- I don't know when you got on the
13 phone today, but at a prior hearing I had raised the issue with
14 counsel for the creditors' committee and the debtors that I
15 wanted to establish procedures, particularly with respect to
16 issues that arose in connection with loan modifications,
17 because I was beginning to see the objections to claims that
18 related to it. And in some instances, there may need to be a
19 hearing at which people will have to provide evidence to
20 support their claims. I think in the first instance what I'm
21 going to ask both the debtors and the committee's borrower
22 counsel to address is the issue of what are the elements of
23 valid legal claims for wrongful denial of a loan modification.
24 And by framing it that way, I'm not limiting it to a single
25 cause of action.

1 As I say, I've read -- in the few cases I've read -- I
2 haven't had much chance to look at this yet. But I mentioned
3 the First Circuit case, which primarily it evaluates some
4 others. The only case -- the only theory that it reversed, I
5 think, was with respect to the breach of contract. And I'm not
6 sure that would apply here, because there was a trial plan, he
7 successfully completed it, he got a final modification on
8 essentially the same terms. That was where the problem came,
9 his performing consistent with that plan, and so he applied for
10 additional plans.

11 I will tell Mr. Walker I have some skepticism whether
12 there is a valid legal claim that can be asserted, but in
13 fairness, not only to the Walkers, but this issue is really --
14 I see it as a recurring issue with respect to some of the other
15 claims objections I have. I need to get a better grasp of
16 that.

17 Mr. Walker, you'll get served with the pleading that
18 gets filed by the debtor and by the committee, and if you want,
19 you know, it's going to really address the legal arguments, so
20 I'm not necessarily expecting you to respond, but you'll have
21 an opportunity to do that. But you'll get notice of a
22 subsequent hearing and maybe in connection with when I finally
23 approve a procedures order to deal with some of these claims.
24 So we'll make sure that you get notice of what's happening,
25 okay?

1 MR. WALKER: Your Honor, I really appreciate it.

2 Could I just add one short thing, and I'll be very brief?

3 THE COURT: Yes, please, go ahead.

4 MR. WALKER: In the responses to letters I got with
5 the objections, in both of those they circled, out of all the
6 things they could circle, "Account does not meet HAMP program
7 requirements." And then they go on to say -- and they give a
8 phone number, which I always called each time, and they said
9 well, there's going to be other programs, it continually went
10 on. In their answer -- I guess in their comments to the Court,
11 where they got this on page 6 of 12, it's Exhibit 1; I'm not
12 sure what their filing -- their filing docket number is
13 5294-1. In their comments it says that the loan modification
14 was, of course, denied. But they indicated that in both of the
15 occasions, the claimant received a letter regarding the
16 modification denial, and also spoke with GMAC employees
17 regarding the denial. There's no question that is what
18 happened.

19 THE COURT: Okay.

20 MR. WALKER: I mean, it's just -- I was -- I
21 understand where you're coming from, and my wife even told me
22 that I was wasting my time, but whatever. We were tagged by
23 the company and it's just -- well, I apologize for --

24 THE COURT: Okay, that's all right. So you'll be
25 notified when we're going to have another hearing and how we'll

1 proceed. If you have any other -- one of the things in the
2 procedure order, if you have any other documents that support
3 your assertion of the claim, you'll have to submit those to the
4 Court, but we'll deal with that going forward.

5 Okay. Thank you very much, Mr. Walker.

6 MR. WALKER: Thank you. Am I through with the phone
7 call, or --

8 THE COURT: Yes, you are. Okay.

9 MR. WALKER: Thanks very much.

10 THE COURT: All right.

11 MR. WALKER: Thanks for listening to me, I appreciate
12 that.

13 THE COURT: Mr. Wishnew, let's proceed.

14 MR. WALKER: By the way --

15 THE COURT: Yes.

16 MR. WALKER: -- Mr. Jonathan Petts --

17 MR. WISHNEW: He's my colleague, Your Honor.

18 THE COURT: Yes.

19 MR. WALKER: Jonathan Petts, I would like the Court to
20 know that he is a gentleman, he is just very, very -- I think
21 he's with the debtors and he knew -- and I had my stuff in
22 storage and I had some problems getting some of the
23 documentation, and still some is missing, but I couldn't get
24 it. But he was a gentleman through the whole thing and treated
25 me very fairly; I really appreciate that.

1 THE COURT: I'm sure he'll appreciate it, because it's
2 not often that they hear compliments from people who are
3 asserting claims against the debtor, but I appreciate hearing
4 it as well. Thank you very much, Mr. Walker.

5 MR. WALKER: Thank you. Bye.

6 THE COURT: Go ahead.

7 MR. WISHNEW: I'll make sure to frame the transcript
8 for Mr. Petts.

9 THE COURT: Yeah.

10 MR. WISHNEW: That moves us to, Your Honor, page 21,
11 into the twenty-sixth omnibus objections. And there are
12 objections going to three claimants: Juana Cerna, Fannie
13 Kendrick Dietrich, and Phenon Walker. So I'm going to first
14 address Juana Cerna, claim number 3816. I don't know if Your
15 Honor wants to see if anyone is appearing.

16 THE COURT: Is anyone at the hearing for Phenon Walker
17 or Juana Cerna?

18 Mr. Nosek?

19 MR. NOSEK: Good afternoon, Your Honor. With regard
20 to Ms. Cerna, we spoke with her on October 7th, explaining the
21 debtors' response and the basis for the objection. And what
22 she apparently did not understand is that the money that she
23 had paid had actually dischar -- taken care of her second lien
24 on her house, and it was released. And she indicated to us the
25 she would not be appearing today and that she understood the

1 basis of the objection. And she, I guess, isn't going to press
2 her response any further.

3 THE COURT: All right. Let me read my notes for a
4 second here.

5 All right. And the issue here was she made a payment
6 of 12,803 dollars to GMAC, and she questioned how that money
7 was being applied.

8 MR. NOSEK: Right.

9 THE COURT: And the debtors' response, and I gather
10 your conversation with her, Mr. Nosek, explained what happened.

11 MR. NOSEK: Yes, Your Honor.

12 THE COURT: And on that basis -- and I've reviewed the
13 papers, and I understand it as well, so the debtors' objection
14 to the Phenon Walker (sic) claims -- it's claim 5429 and
15 4942 --

16 MR. WISHNEW: Actually, Your Honor, I'm sorry, we were
17 dealing with Juana Cerna --

18 THE COURT: I'm sorry.

19 MR. WISHNEW: -- claim --

20 THE COURT: -- Juana Cerna; it's 5076 (sic), claim
21 5076 (sic).

22 MR. WISHNEW: Sorry, Your Honor, just claim 3816.

23 THE COURT: I guess my notes have the wrong number;
24 3816?

25 MR. WISHNEW: Yes, Your Honor.

1 THE COURT: All right. But I am right, it's the
2 12,803 --

3 MR. WISHNEW: Yes.

4 THE COURT: -- dollars?

5 MR. WISHNEW: Everything else is correct, Your Honor.

6 THE COURT: Okay. Sustained.

7 MR. WISHNEW: Thank you very much, Your Honor. That
8 moves us to Fannie Kendrick Dietrich, claim 1385. This is a
9 claim --

10 THE COURT: Is anybody appearing for Ms. Dietrich?
11 Go ahead.

12 MR. WISHNEW: This is a claim, Your Honor, an
13 unspecified amount, in which she alleges that she was expecting
14 a refinancing, that was purportedly completed online, to reduce
15 her monthly payment. As set forth in the reply, as well as in
16 the supplemental declaration, what happened here was that she
17 did make an application for a modification. The application
18 was denied. And again, it goes to the ration of expenses to
19 income and the ability to have the mortgage payment fixed at an
20 acceptable level. As we explain in our supplemental
21 declaration, there was a large one-time expense in her
22 application that severely increased her expenses relative to
23 her income, which likely contributed to the denial of her
24 application.

25 At this point in time, we're not quite sure how Ms.

1 Dietrich has been damaged, because our records show that her
2 loan is current at this point in time. It is currently being
3 serviced by Ocwen, and --

4 THE COURT: As I understand it, she applied for two --
5 applied for loan modifications twice, once in November of 2011,
6 and she was sent a denial on November 17th, 2011. And she then
7 spoke with somebody, an employee of GMAC, on November 21, 2011,
8 and she reapplied for a loan modification in January 2012, and
9 she was provided with a letter of denial from that. Am I
10 correct?

11 MR. WISHNEW: The only fact that I would correct is
12 that she reapplied December of 2011 and was denied January of
13 2012.

14 THE COURT: Okay. All right.

15 MR. WISHNEW: But other than that, Your Honor is
16 correct, and I would just add that we don't believe Ms.
17 Dietrich has been damaged. Our consideration of her
18 applications was reasoned and appropriate, and at this point
19 she is current on her mortgage. So --

20 THE COURT: The Court has reviewed the papers, both in
21 support of and in opposition to the debtors' objection to the
22 claim of Fannie Kendrick Dietrich, and the Court is satisfied
23 that there is no legal basis for liability for the denial of
24 the loan modific -- any of the loan modifications to Ms.
25 Dietrich, and so the objection is sustained.

1 MR. WISHNEW: Thank you very much, Your Honor.

2 That brings us to Phenon Walker, claim 5429 in the
3 twenty-sixth omni. This is a proof of claim for 143,931
4 dollars and a penny. It follows an unsecured claim, the stated
5 basis of which is a surplus check for a 2011 money loan. Just
6 by way of loan history, for Mr. and Ms. Walker --

7 THE COURT: I thought there was a second claim here.

8 MR. WISHNEW: There is a second claim, and that was
9 addressed in our twenty-seventh omni. I'm happy to address
10 both right now, Your Honor.

11 THE COURT: All right, yeah, address both of them
12 together.

13 MR. WISHNEW: Absolutely. So both claims relate to
14 the same loan.

15 THE COURT: The second claim is 4942.

16 MR. WISHNEW: That's correct, Your Honor, and that's
17 in the amount -- in excess of one million doll --
18 \$1,096,291.07.

19 THE COURT: Is anybody on the phone for Phenon Walker?
20 Anybody in the courtroom?

21 All right. Go ahead.

22 MR. WISHNEW: Thank you, Your Honor. This is a loan
23 that went back -- it originated in 2003. It has been in
24 default and owing since July of 2004. It was a fixed-rate loan
25 in the amount of 975,000 dollars. Mr. and Ms. Walker are still

1 in the home. And like I said, they've made few, if any,
2 payments since 2004 on this home.

3 The claim with regards to the surplus escrow, that is
4 simply a mischaracterization. What had happened is because
5 they fell so far behind on taxes and insurance, the servicer
6 made the payments, and the records reflected an escrow balance
7 as if everything was current -- or as if the debtor had -- or
8 I'm sorry, as if the borrower had performed. In no way is what
9 was submitted by the claimant indicative of monies owing to
10 them. Because they were so severely in default, there would be
11 no outstanding surplus owing back to them.

12 Again, with regards to the second claim, the
13 million-plus claim, again, this is something where it's
14 completely unsubstantiated. And given the claimants' payment
15 history and performance here, as well as the fact that they've
16 been in this home, I believe in large part, since they've been
17 in and out of the bankruptcy courts approximately seven times
18 in the past nine years, there just is no valid basis, no legal
19 basis for a claim against the debtor on account of -- you know,
20 it's just doing its job in servicing a property and keeping
21 current on taxes and insurance so as to avoid any sort of
22 improper liens being placed against the property and hurting
23 the investor for whom the servicer's working.

24 THE COURT: All right. Let me -- this is the
25 debtors' -- it's in the twenty-sixth and twenty-seventh omnibus

1 objections with respect to claims 5429 and 4942. No response
2 was filed, although Mr. Walker faxed a letter to the debtors'
3 counsel on September 13th, 2013, requesting a two-week
4 adjournment of the response deadline and a thirty-day
5 adjournment of the hearing. And the debtors counsel agreed to
6 that on September 30th, and the hearing was moved to today.

7 MR. WISHNEW: That's correct, Your Honor.

8 THE COURT: So Mr. Walker's response deadline was
9 extended, but no response has been filed. The Court has
10 reviewed the evidence in connection with this claim objection,
11 and is satisfied the objection is well taken, so the objection
12 is sustained.

13 MR. WISHNEW: Thank you --

14 THE COURT: The objection to both claims is sustained
15 and they're expunged.

16 MR. WISHNEW: Thank you very much, Your Honor.

17 That brings us to, again, the twenty-seventh omnibus
18 objection, and we are on page 21, carrying over to page 22.
19 And there are two additional claims to be addressed, one filed
20 by a Bette Jean Yelder, claim number 2002, and Freddie Scott,
21 claim number 3751.

22 THE COURT: We're going to take a ten-minute recess
23 before we get to those. I'm going to come back in ten minutes.
24 We're going to go through the agenda and not break for lunch,
25 but I do need to take a ten-minute recess.

1 MR. WISHNEW: Thank you, Your Honor.

2 (Recess from 12:20 p.m. until 12:33 p.m.)

3 THE COURT: All right. Please be seated. Mr.
4 Wishnew?

5 MR. WISHNEW: Thank you, Your Honor. Continuing on
6 page 22 of the agenda, in regards to the twenty-seventh omnibus
7 objection, the claims of Bette Jean Yelder, claim number 2002,
8 and Freddie Scott, claim number 3751.

9 THE COURT: Is anybody appearing for Mr. Scott or Mr.
10 Yelder?

11 MR. JENKINS: Yes. Yes, Your Honor.

12 THE COURT: You. Who are you, please?

13 MR. JENKINS: This is Henry Jenkins with Goldman Behr
14 LLC in Montgomery, Alabama.

15 THE COURT: And who are you appearing for?

16 MR. JENKINS: Ms. Bette Yelder and Mr. Willie Yelder,
17 her husband, which is in my office as we speak.

18 THE COURT: Okay. I apologize. Just tell me your
19 name again.

20 MR. JENKINS: Henry Jenkins.

21 THE COURT: Okay. Thank you, Mr. Jenkins.

22 MR. JENKINS: Thank you, sir.

23 THE COURT: I'll give you a chance to respond after
24 Mr. Wishnew speaks.

25 MR. WISHNEW: Thank you, Your Honor.

1 MR. JENKINS: Okay.

2 MR. WISHNEW: This --

3 MR. SCOTT: Judge? This is Timothy Scott. I am also
4 here.

5 THE COURT: Okay. Mr. S -- now this objection is to
6 the claim of Freddie Scott. Who are -- who is Timothy Scott?

7 MR. SCOTT: I am the husband of Freddie Scott.

8 THE COURT: Okay. All right. Technically you can't
9 appear for another person. Are you a lawyer, Mr. Scott?

10 MR. SCOTT: No.

11 THE COURT: All right. I'm going to permit you to
12 argue after Mr. Wishnew speaks. Go ahead, Mr. Wishnew.

13 MR. WISHNEW: Thank you, Your Honor.

14 MR. SCOTT: Okay. Thank you.

15 MR. WISHNEW: With regard to Ms. Yelder's claim, it is
16 a claim for 100,000 dollars filed as a secured claim against
17 Residential Capital. The stated basis of the claim is a
18 mortgage note. Based upon the debtors' -- I'm sorry -- the
19 claimant's response she asserts that "my claim should not be
20 disallowed because of the mental hardship and financial
21 hardship caused by the debtors."

22 It's unclear to us -- she does not really go on to
23 substantiate the specific hardship, or how she has been
24 damaged, nor quantify any damages other than the 100,000
25 dollars for which we don't believe there's a basis. And in

1 reviewing our files we see no active litigation with this
2 claimant, and the matter is not in foreclosure. And at the
3 same time, the loan is current right now.

4 So it's our position, the debtors' position, that the
5 claim should be disallowed and expunged because there really is
6 no stated basis or substantiation of damages or any liability
7 for the debtors.

8 THE COURT: All right. Mr. Jenkins, could you --
9 well, let me go ahead and hear from you. I guess the issue I'm
10 most interested in after reading these papers was what is the
11 basis for any legal liability against any of the debtors with
12 respect to the Yelders?

13 MR. JENKINS: Okay. Let me first state, Your Honor,
14 that I am a consultant. I am not an attorney, in fact.

15 THE COURT: Well, I shouldn't even be hearing from
16 you.

17 MR. JENKINS: Ms. Yelder and Mr. Yelder came to my
18 office for a loan modification which went pretty good to the
19 end where they did receive a modification. However, Ms. Yelder
20 was constantly harassed; she was constantly put in a
21 threatening situation of losing her home. There was several
22 robo-calls coming to Ms. Yelder and Mr. Yelder that really
23 affected them to the degree that Ms. Yelder just recently, in
24 the last month or so suffered a stroke as a result of the
25 pressure and the stress from ResCap/GMAC.

1 It is in our opinion, Your Honor, that intentional
2 infliction of mental distress was applied to a very high
3 standard to my client, Ms. Yelder. And I do have her in my
4 office.

5 And I think you know we're southerners down here. I
6 want to say that we did enjoy y'all's' northern dialect up
7 there, just listening in on a lot of the cases. But we take
8 our homes pretty serious down here. This is all that most of
9 the people have. And the way that they approached
10 Ms. Yelder -- and we got a list of robo's names that was called
11 that constantly badgered Ms. Yelder, constantly made threats of
12 her sleeping on the street and not being in the house, and
13 things of that nature.

14 So Ms. Yelder is trying to take action to have her day
15 in court. She have suffered a stroke, sir, so she won't be
16 able to talk elongated talk, but she do want to express to the
17 Court what exactly happened to her.

18 THE COURT: Mr. Jenk --

19 MR. JENKINS: And her husband is here as well. He's a
20 sixty-seven year old gentleman that she was care provider. He
21 has cancer, melanoma cancer, and he's in severe condition as
22 well. So --

23 THE COURT: Mr. Jenkins. Did you say that you have
24 letters from somebody at GMAC making threats against --

25 MR. JENKINS: No.

1 THE COURT: -- the Yelders?

2 MR. JENKINS: We have the names of the people that
3 called Ms. Yelder in a very hostile way, making -- which we
4 know now was idle, but at the time Ms. Yelder did not know.
5 She's a sixty year old gal that's really takes phone calls to
6 heart. And when they call her and say things of that nature,
7 she really panicked and it also sent her into a deep
8 depression.

9 But I want Ms. Yelder -- she's been -- all morning
10 being very patient to say what she needs to say to the Court,
11 and also, Your Honor, to ask for some type of relief from the
12 Court. So if you would, Your Honor, I'd like to put her on.

13 THE COURT: Go ahead, Ms. Yelder.

14 MS. YELDER: Morning. Yes, I was getting harassing
15 phone calls from GMAC. Sometime I get as many as ten or twelve
16 a day and all from different people at different times
17 threatening that I wouldn't be in my home. I had one to even
18 tell me a phone was electric, have my phone turn off so I could
19 help pay my mortgage bill. And at this time I was helping with
20 my husband who was sick and they didn't really care who
21 answered the -- they just lit up on them and sometime my
22 grandchildren would be at the house and maybe they'd pick up
23 the phone and they'd just go on talking.

24 And it just continued and it was just -- and since
25 then I had a stroke and now I'm permanently disabled. And I

1 believe some of all this stress from that -- me to have this
2 stroke. And I'm just -- I just -- it was just too much for me.
3 I just -- it was just more than I could take. I don't think
4 it's right for them -- sure, I was behind, but I don't think it
5 was right for them to talk to me the way they was talking. It
6 was just -- just couldn't believe it.

7 MR. JENKINS: Calm down, Ms. Yelder, calm down.

8 Your Honor, my client is really distraught by the
9 actions of -- the wrongful actions of GMAC/ResCap. So she has
10 been patient here this morning with her to get through this
11 ordeal, so --

12 THE COURT: All right. Anything else you want to add,
13 Ms. Yelder.

14 MS. YELDER: Yeah, I just say GMAC, someone should --
15 it should be a law against the way they treat these people.
16 And I feel like I deserve some type of restitution for the way
17 they treated me and talked to me.

18 THE COURT: All right. Mr. Wishnew, you want to
19 respond?

20 MR. WISHNEW: Your Honor, while I am sympathetic for
21 Ms. Yelder, and I certainly wouldn't wish any sort of stroke or
22 anything else on someone, I, frankly, can't say that the --

23 THE COURT: Let me ask you this. The assertions of
24 fact that have been made, would they be sufficient to state a
25 claim under state of federal law under fair debt collection

1 practices, things of that nature? I mean I thought that the
2 law -- it's a far cry -- I mean, I have someone who's not
3 represented by counsel who's made factual assertions -- I'm not
4 evaluating the veracity of them now -- that improper collection
5 activities were made.

6 And I guess the issue -- if those facts are asserted
7 and proven, whether they properly state a claim under state or
8 federal law, Fair Debt Collection Practices Act, a variety of
9 other state similar statutes.

10 MR. WISHNEW: Sure, Your Honor. I would say this. I
11 recognize there are causes of action under the Fair Debt
12 Collection Practices Act for egregious collection practices.
13 What is before the Court within the four corners of the claim
14 is simply a allegation of mental, emotional hardship. There
15 have been some additional facts that have come out at the
16 hearing. But it's the debtors' position that what is before
17 the Court is not enough to substantiate a claim against the
18 debtors.

19 THE COURT: The only issue for me today is whether
20 I've heard enough -- either read enough or heard enough from a
21 pro se party to determine that this raises a contested matter
22 that's going to require another hearing. I don't -- does --
23 let me ask this. Have you or your colleagues looked at the
24 Yelders' file to see what, if any, correspondence -- are there
25 logs of telephone calls? Is there any indication whether the

1 debtor employed a debt collector in connection with the
2 Yelders' account? Who that is; things of that nature?

3 MR. WISHNEW: We would have to go back and
4 specifically check our servicing notes with regards to the
5 specific collection actions that were taken as to Ms. Yelder.
6 I guess the only thing I would add, Your Honor, is that what we
7 have before you are very general allegations. I'm not sure
8 they rise to the level of specificity to substantiate and state
9 a claim.

10 THE COURT: All right. I'm going to take the matter
11 under submission, and don't be surprised if I determine that
12 it's a contested matter and is going to require some further
13 evidentiary support from the debtors to refute the claim, and
14 further evidentiary -- and clearly further evidentiary support
15 by Mrs. Yelder.

16 It's not sufficient to simply state on the telephone
17 that -- something that was not in the proof of claim, that
18 there were ten to twelve collections calls per day and various
19 other statements made. It's easy to say it and another thing
20 to prove it. But for today, I'm going to adjourn the matter.
21 I'll enter a written order in connection with it.

22 Thank you very much, Mrs. Yelder.

23 MR. JENKINS: Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Jenkins.

25 All right. What's the next matter, Mr. Wishnew?

1 MR. WISHNEW: Thank you, Your Honor. The next matter
2 is the claim of Freddie Scott, claim 3751. This is a claim
3 filed in the amount of 208,250 dollars on an unsecured basis
4 against Residential Capital. The allegations, which are made
5 without any sort of supporting documentation, is that two
6 debtor entities purportedly overstated the income of the
7 claimant and her husband in the mortgage application and
8 misrepresented to them that the mortgage would have a fixed
9 rate.

10 This claim speaks specifically to practices or what
11 occurred at the origination of the loan. The loan was not
12 originated by the debtor entity.

13 THE COURT: The loan was originated by Stonecreek
14 Funding Corporation.

15 MR. WISHNEW: Correct.

16 THE COURT: That's not affiliated with the debtor?

17 MR. WISHNEW: That's correct, Your Honor. So the only
18 role the debtor had here was -- at the time of the alleged
19 wrongdoing was the servicing. And --

20 THE COURT: How long after the origination of the loan
21 did -- because the loan was acquired by RFC, is that correct?

22 MR. WISHNEW: Correct, Your Honor. And then I believe
23 it was --

24 THE COURT: And service by Homecomings?

25 MR. WISHNEW: Serviced by Homecomings. Correct, Your

1 Honor.

2 THE COURT: And when was the loan originated and when
3 did RFC acquire it?

4 MR. WISHNEW: Let's -- hold on one minute, Your Honor.
5 So the -- it was originated in October 26th, 2001. The
6 debtor -- Homecomings began servicing November 21st, 2001.

7 THE COURT: And when did RFC acquire the loan?

8 MR. WISHNEW: I believe RFC acquired it within -- hold
9 on one minute, Your Honor. Within that same time period,
10 between October 26th and November 21st, RFC acquired the loan.

11 THE COURT: Was this -- this loan go under a
12 securitization?

13 MR. WISHNEW: I believe so, Your Honor.

14 THE COURT: So essentially RFC was warehousing the
15 loan until a securitization was done.

16 MR. WISHNEW: That would be correct, Your Honor.

17 THE COURT: Go ahead.

18 MR. WISHNEW: So, again, Your Honor, it's the debtors'
19 position that there's not a valid claim being stated against
20 the debtors because the alleged wrongdoing that was -- is being
21 asserted by Ms. Scott is -- really goes back to the origination
22 of the loan. I'd also add in terms of her damages, it's not
23 clear to us how she's been damaged considering that the loan at
24 this point current and not in any sort of foreclosure
25 proceeding.

1 THE COURT: See, I don't -- this has come up
2 repeatedly today. I don't expunge a claim because damages are
3 uncertain. Okay. That's not really today's issue. The issue
4 for me is whether the claim as asserted properly states a
5 claim.

6 That's essentially -- you're arguing that it does not
7 because the claims that have been raised focused on the loan
8 origination which was not done by any of the debtors. So I
9 don't want to deal with whether there's damages or whether it's
10 overstated or any of that. Okay.

11 MR. WISHNEW: I would say that, then, that really is
12 how -- the debtors' --

13 THE COURT: Okay.

14 MR. WISHNEW: -- position, and don't have much more to
15 add --

16 THE COURT: All right.

17 MR. WISHNEW: -- unless Your --

18 THE COURT: Let me hear --

19 MR. WISHNEW: -- Honor has any questions.

20 THE COURT: Mr. Scott, I'm going to let you speak on
21 behalf of --

22 MR. SCOTT: Yes.

23 THE COURT: -- Freddie Scott.

24 MR. SCOTT: This is Timothy Scott. I am on the
25 original proof of claim that was filed in the case. But

1 basically the information we received -- and this is a case
2 that we've been dealing with primarily for twelve years. They
3 indicate in the -- in this document at number 9, number 37,
4 they allege that the representatives of GMAC and RFC overstated
5 the income of the plaintiff.

6 Now, what we have always maintained was that when we
7 sat down at the closing, October 26th, 2001, and prior to
8 that -- prior to that we filled out a universal -- excuse me --
9 a uniform residential loan application to apply for a loan
10 which we indicated to the representative had to be a fixed rate
11 loan only because prior to that, when we purchased a home, we'd
12 also had a fixed rate only loan simply because I only received
13 disability income as a VA disabled veteran.

14 And the problem began to occur -- when we gave to the
15 representative -- we gave him a copy of our prior uniform
16 residential loan application, which indicated -- and we've
17 always purchased property as borrower and co-borrower, always.
18 This particular loan, which was a refinancing, we applied for
19 it, we qualified for the loan. The indication here was that,
20 in this document, they're stating that apparently causing them
21 to obtain a mortgage that they would not otherwise have
22 qualified for.

23 We had qualified for the loan because it was similar
24 in nature to the previous loan that we had had on the property.
25 The only difference being the previous loan was a twenty-five-

1 year loan with about the same interest rate. The refinancing,
2 the only difference was it was to be a thirty-year loan with
3 the same foundation of being a fixed rate loan because we could
4 not afford any adjustments that would occur.

5 THE COURT: Mr. Scott, let me ask you this. When you
6 met with -- you described it as a representative. Was it a
7 representative of Stonecreek Funding Corporation or of some
8 other entity? Was it a loan broker that you dealt with?

9 MR. SCOTT: We initially had a loan broker. The loan
10 broker basically, I guess, a representative of the loan broker
11 took all of the information.

12 THE COURT: Did the broker shop the loan? I mean, a
13 lot of loan brokers are independent and they ascertain what
14 loans are available from various parties. Could you just tell
15 me what -- did you understand that this was a representative of
16 Stonecreek Funding?

17 MR. SCOTT: At that particular time of filling out the
18 application, we didn't know who the prospective lender would be
19 or could be.

20 THE COURT: Okay.

21 MR. SCOTT: We had no idea.

22 THE COURT: Okay.

23 MR. SCOTT: We were just supplying our information.

24 THE COURT: So you met with a loan broker; you filled
25 out an application; you get it to him; and he comes back with

1 who prospective lender is. Is that what happened?

2 MR. SCOTT: No. We didn't know who the lender was
3 until after the closing.

4 THE COURT: Okay. All right. So you didn't --

5 MR. SCOTT: In the --.

6 THE COURT: Go ahead.

7 MR. SCOTT: On the application -- go ahead. I'm
8 sorry.

9 THE COURT: No, go ahead. You go ahead.

10 MR. SCOTT: On the application that we filled out,
11 both the names of myself and my wife, Freddie M. Scott, were
12 included in the application along with what type of loan we
13 were attempting to get, which was a conventional at a fixed
14 rate --

15 THE COURT: When did you find out that you --

16 MR. JENKINS: -- which was noted on the original
17 application.

18 THE COURT: When did you find out that you got --

19 MR. SCOTT: Along with that, as I stated earlier, we
20 gave him a copy of our previous universal residential loan
21 application --

22 THE COURT: Right.

23 MR. SCOTT: -- that had all of the information, which
24 would make it easier for him to transcribe a lot of the details
25 which didn't really change a whole lot except for maybe dates

1 and a few amounts.

2 THE COURT: Mr. Scott, when did you find out that you
3 got a variable rate loan rather than a fixed rate loan?

4 MR. SCOTT: After the closing and subsequent days and
5 weeks because we didn't get all of our loan documents on
6 October 26th, 2001. And several things happened during that
7 period of time. But they stated at number 38 in this document
8 that a review of the note establishes that the debtors have
9 claimed that they played no role in the origination of the
10 claimants' mortgage.

11 We doubt that simply because in this adjustable rate
12 note, at the bottom of the page and on subsequent pages, it
13 indicates that this a GMAC Residential Funding form 1555.
14 Unless Stonecreek Funding decided to create their own note and
15 put GMAC at the bottom, they did know when the closing occurred
16 and after that.

17 2004, this loan began to adjust upwards. Prior to
18 that we had made inquiries. We said this is not the loan that
19 we applied for. It began to escalate upwards of over 900
20 dollars more than what we had initially had.

21 THE COURT: All right. Let me ask -- Mr. Scott, I
22 want to ask Mr. Wishnew some questions.

23 MR. SCOTT: Sure.

24 THE COURT: Did RFC have a contract or agreement with
25 Stonecreek Funding to originate loans and sell them to RFC?

1 MR. WISHNEW: Yes, Your Honor.

2 THE COURT: Do I have that document?

3 MR. WISHNEW: You do not, Your Honor.

4 THE COURT: All right. I'm determining that this a
5 contested matter, and a subsequent hearing will be set down.
6 Mr. Wishnew, your main argument here is that this loan wasn't
7 with the debtors, with any of the debtors, and that really this
8 is an origination claim against Stonecreek Funding. I need to
9 see whether Stonecreek Funding throughout this transaction was
10 acting as the agent for RFC and consequently whether any --
11 whether RFC would be liable for any misrepresentations,
12 omissions, or other wrongful acts committed by Stonecreek
13 funding.

14 Now, also I'm going to need to know whether this loan
15 broker who arranged this loan with Stonecreek Funding had a
16 contractual arrangement with either RFC or Stonecreek Funding.
17 So this is, again, an instance where I'm not sure that the face
18 of the claim is sufficient, but it's a pro se creditor. And it
19 may well be that you'll prevail, but I have questions where
20 Stonecreek was clearly under contra -- I mean, this sounds like
21 the typical arrangement, that Stonecreek was originating the
22 loans, warehousing them all with RFC for securitization
23 purposes, and there are lots of issues that arise from that.
24 And there's certainly -- whether the creditors have asserted a
25 proper claim for some wrongful conduct in connection with the

1 origination of the loan, that it was represented it was going
2 to be a fixed rate loan when it was -- the documents said it
3 was a variable is going to remain to be seen.

4 So I'm determining this to be a contested matter.
5 What that means, Mr. Scott, is a subsequent order will be
6 entered by the Court in due course explaining what the
7 procedures will be going forward. Basically, you're going to
8 have the burden of proving your claim, but I do have -- you've
9 raised enough factual issues that the debtors' got some answers
10 it's going to have to provide.

11 Mr. Scott, you and Ms. Scott will be notified.

12 MR. SCOTT: Could I just indicate one last thing
13 before you end this?

14 THE COURT: Sure, go ahead.

15 MR. SCOTT: On the uniform residential loan
16 application that they've supplied, it shows only my wife as a
17 borrower, but the potential issue is that they either altered,
18 changed, or what we maintain is falsified the application.
19 They show her as making 10,000 dollars per month. In the
20 application itself, it shows that she made no more than 2,900
21 dollars a month. At the closing they told us that your income,
22 Mr. Scott, is not needed. Your loan can go through just based
23 on her income.

24 THE COURT: May I ask you this, Mr. Scott? Did they
25 ask for -- did somebody ask you for W-2 forms or other evidence

1 or your or Mrs. Scott's income?

2 MR. SCOTT: Yes. Prior to -- during the application
3 process we supplied to them copies of W-2s, tax return, and,
4 again, the prior application.

5 THE COURT: So is it your representation today that
6 the actual application, when it was filled out, overstated
7 yours or your wife's income?

8 MR. SCOTT: Well, it absolutely overstated the income,
9 but that was intentional.

10 THE COURT: Well, whether it's intentional or not, I'm
11 not going to get into. I just --

12 MR. SCOTT: Okay. That's fine.

13 THE COURT: -- wanted to deal with the issue of
14 whether you're representing that the application that the
15 broker, when he completed it, overstated the income, and that
16 you had given him documents that showed what the actual income
17 was. Is that a fair statement?

18 MR. SCOTT: Absolutely.

19 THE COURT: Okay. All right.

20 MR. SCOTT: They had a complete --

21 THE COURT: Okay. Mr. Scott, just --

22 MR. SCOTT: -- what would normally, I guess,
23 classified as a fully doc'ed loan.

24 THE COURT: Okay. So just so you understand, you'll
25 get a notice. There'll be further notice of how this matter is

1 going to proceed. So you'll have plenty of notice of when
2 there's going to be a subsequent hearing, okay?

3 MR. SCOTT: Okay.

4 THE COURT: You're going to have to come forward with
5 proof to establish the basis for your -- the assertions you've
6 made on the phone today, but we'll go from here, okay?

7 MR. SCOTT: That's fine.

8 THE COURT: Thank you very much, Mr. Scott.

9 MR. SCOTT: Thank you. So I can get off the call now?

10 THE COURT: You are. You're excused.

11 MR. SCOTT: Okay. Thank you very much.

12 THE COURT: Mr. Wishnew?

13 MR. WISHNEW: Thank you, Your Honor. That brings us
14 to item 10 on page 22 of the agenda, the debtors' thirtieth
15 omnibus objection. There are eight contested matters in this
16 objection. If it would be okay with the Court, I'd like to
17 proceed in the manner we address the claims in our reply.

18 THE COURT: Go ahead.

19 MR. WISHNEW: Thank you, Your Honor. The first claim
20 is the claim of Anthony Fisher, claim 1972, filed in the amount
21 of \$286,223.93, regarding his mortgage note. Again, the claim
22 is for the outstanding balance of his mortgage note. Mr.
23 Fisher received a loan modification in 2010, and he complains
24 that there were 38,000 dollars of illegal fees. Part of that
25 loan modification was a deferral of that exact amount, for

1 38,000 and change, to the tail end of the loan so that it was
2 not being forgiven, rather it was the amount that was being
3 modified and --

4 THE COURT: Let me just ask. Is Mr. Fisher or someone
5 on behalf of Mr. Fisher in court or on the phone?

6 Go ahead Mr. Wishnew.

7 MR. WISHNEW: Thank you, Your Honor. So simply, to
8 the extent that the claim does address damages, those damages
9 are nothing more than the deferred amounts on which the
10 claimant is not required to pay interest during the term of the
11 loan, rather it would get paid when the loan matures or is
12 ultimately paid off. Based on our review -- extensive review
13 of our servicing notes, books, and records, we don't see a
14 valid basis for a claim against the debtors in this case.

15 THE COURT: All right. The Court has reviewed the
16 thirtieth omnibus objection with respect to the claim of
17 Anthony Fisher. Mr. Fisher filed two claims against ResCap:
18 \$38,835 administrative priority claim and a \$282,222.93 secured
19 claim. The debtors objected to both as wrongful --
20 categorizing them in the category wrongful foreclosure claims.

21 In his response, Mr. Fisher stated that the 38,835
22 dollars were illegal fees for a home that was sold "under
23 corrupt practices." Mr. Fisher asked the Court to review the
24 process whereby his home was allegedly purchased and sold to an
25 attorney named David Sterns in 2008, and then resold several

1 times to entities that include the debtors.

2 Mr. Fisher said he wanted to work diligently for a
3 resolution of the matter.

4 In the reply, the debtors refute Mr. Fisher's
5 allegations that his loan was illegally purchased by David
6 Stern and, according to the debtors, GMAC as servicer referred
7 Mr. Fisher's loan to foreclosure in 2008. The Law Offices of
8 David J. Stern was the foreclosing attorney for GMAC. And on
9 April 9th, 2010, Mr. Fisher entered into a loan modification,
10 and at no time did Mr. Stern, the lawyer, own the property.

11 As to the \$38,835.20 in so called illegal fees, the
12 debtors have demonstrated that this amount was the balance of
13 the loan that was deferred as part of a loan modification and
14 the deferred balance was a non-interest-bearing principal
15 balance that consisted of due payments, escrow, and/or
16 principal balance and was placed at the end of Mr. Fisher's
17 loan to assist in lowering Mr. Fisher's monthly payments. And
18 that's a very typical structure for a loan modification as you
19 go through the various iterations to get down to the thirty-one
20 percent threshold.

21 Based on the Court's review of the papers, the
22 objection to the Fisher claim is sustained.

23 MR. WISHNEW: Thank you very much, Your Honor. That
24 brings us to the next claim of Barry Eskanos, claim number 19.
25 This is a claim in the amount of 264.5 million dollars. And I

1 believe it's --

2 MR. ESKANOS: Your Honor --

3 THE COURT: Hold on. Mr. Eskanos, are you on the
4 phone?

5 MR. ESKANOS: Yeah, I just want to let you know I'm
6 here, Your Honor.

7 THE COURT: Okay. I'll give you a chance after Mr.
8 Wishnew has spoken. Go ahead, Mr. Wishnew.

9 MR. WISHNEW: Thank you, Your Honor. So, Your Honor,
10 this claim goes back to a --

11 THE COURT: This is a claim of both Barry Eskanos and
12 Ami Eskanos.

13 MR. WISHNEW: That's correct, Your Honor.

14 THE COURT: All right. Go ahead.

15 MR. WISHNEW: The --

16 MR. ESKANOS: Yeah, she had to go to work, Your Honor.
17 So I'm sorry --

18 THE COURT: That's okay. That's okay. Just wait your
19 turn and I'll hear from you.

20 Go ahead, Mr. Wishnew.

21 MR. WISHNEW: Sure. The debtors have objected to this
22 claim on the basis that is precluded by res judicata,
23 collateral estoppel, and the Rooker-Feldman doctrine. This is
24 essentially a recital and trying to re-begin or recommence
25 earlier litigation that has been fully adjudicated on the

1 merits in the Florida courts.

2 Just by way of some background, Your Honor, this loan
3 was originated back in 1999. I believe the principal amount
4 was 364,000 dollars. And back in 2005, Washington Mutual and
5 Litton Loan Servicing, who had respectively owned and serviced
6 the loan, began a foreclosure proceeding in Florida. That
7 matter proceeded up through the -- there were counterclaims by
8 Mr. Eskanos, there was a motion to dismiss that then allowed
9 Mr. Eskanos to amend his counterclaims, and it's the debtors'
10 position that the counterclaims that have been fully
11 adjudicated in the Florida State Courts are the same claims
12 that are at issue in the four corners of the claim before your
13 Court.

14 THE COURT: The prior case was against WaMu, not
15 against GMAC.

16 MR. WISHNEW: That's correct, Your Honor. Absolutely.

17 THE COURT: So why does res judicata bar the claim
18 against GMAC?

19 MR. WISHNEW: Because subsequently, to the extent that
20 GMAC acted as a servicer and took it over from Litton Loan,
21 then Litton Loan acting for Washington Mutual, it should have
22 the benefit of the same preclusive effect.

23 I'd also argue, Your Honor, that essentially this is,
24 like I said, it's gone -- summary judgment -- sorry. Let me
25 start over. The counterclaims and the amended counterclaims

1 were disposed of by the Florida courts in 2009 on -- by final
2 order. That was then appealed by the claimants to the next
3 appellate level in Florida. That was affirmed.

4 THE COURT: Yeah. It went to Third District Court of
5 Appeals, which affirmed, and then the Florida Supreme Court
6 denied a petition for writ of mandamus on February 4th, 2013,
7 correct?

8 MR. WISHNEW: That's exactly correct, Your Honor. So
9 at this point in time, the actions that are at issue in this
10 claim are actions that preceded GMAC Mortgage's or ResCap's
11 involvement in any way with these claimants. And they should
12 not be given an opportunity through the claim to try and
13 recommence and rehash claims fully adjudicated previously.

14 THE COURT: Okay. So the Eskanoses had a Chapter 13
15 in Florida as well?

16 MR. WISHNEW: That is correct. Mr. --

17 THE COURT: Did the debtor --

18 MR. WISHNEW: -- Eskanos --

19 THE COURT: -- debtor intervene -- did the debtor --

20 MR. WISHNEW: The debt --

21 THE COURT: -- appear in that?

22 MR. WISHNEW: The debtor did intervene. Did not --
23 intervened in an adversary proceeding.

24 THE COURT: Okay.

25 MR. WISHNEW: He had commenced an adversary proceeding

1 against Washington Mutual, and because of a non-response, GMAC
2 Mortgage as a servicer sought to intervene in order to ensure
3 that there was not a default judgment placed against --

4 THE COURT: And what happened in the Chapter 13?

5 MR. WISHNEW: The Chapter 13 was ultimately -- it is
6 my understanding, it was ultimately dismissed because of Mr.
7 Eskanos' liability. So both the adversary proceeding and the
8 proceeding itse -- the Chapter 13 itself were essentially
9 closed.

10 THE COURT: Okay. All right. Let me hear from Mr.
11 Eskanos. Thank you, Mr. Wishnew.

12 MR. ESKANOS: Thank you.

13 THE COURT: Go ahead, Mr. Eskanos.

14 MR. ESKANOS: Thank you, Your Honor. And first of
15 all, I want to say that that totally and utterly misrepresents
16 our claim, totally and utterly avoids what our claim is about,
17 and we've actually filed before this Court, a motion for relief
18 from the automatic stay, and we're seeking relief on two
19 grounds.

20 First of all, we -- would be the Florida Fraudulent
21 Transfer Act. What opposing counsel didn't tell you was that
22 bankruptcy adversary action, we've obtained a default judgment
23 for the amount of 249-million out of our claim, we obtained
24 default judgment in that amount by clerk's entry. And on
25 default judgment -- excuse me, clerk's entry default on

1 February 10th, 2012 --

2 THE COURT: Against WaMu.

3 MR. ESKANOS: That same day a --

4 THE COURT: Stop. That was a default judgment against
5 WaMu as I understand. Is that correct.

6 MR. ESKANOS: Yes, against WaMu on February 10th,
7 2012. It was the clerk's entry of default. And a copy of that
8 was filed with our pleading.

9 On that same day, GMAC filed a motion with the Third
10 District Court of Appeals substituting plaintiffs. And when we
11 objected to that substitution before Judge Cristol, the
12 attorney for GMAC specifically told Judge Cristol in the
13 bankruptcy court in our adversary proceeding, Your Honor, we --

14 THE COURT: This was in your Chapter 13 case --

15 MR. ESKANOS: But --

16 THE COURT: -- in Florida --

17 MR. ESKANOS: Yes.

18 THE COURT: -- that was subsequently dis --

19 MR. ESKANOS: No, no --

20 THE COURT: Stop.

21 MR. ESKANOS: Yeah, the --

22 THE COURT: Stop. Stop. This was in your Chapter 13
23 that was subsequently dismissed and the adversary proceeding
24 was dismissed with it, is that correct?

25 MR. ESKANOS: No. That's not correct. We asked -- we

1 filed -- the adversary complaint was not dismissed until much
2 later and the actual dismissal is attached, it's the second to
3 last page in the documents they sent us and it says that
4 "Plaintiff may move for an order reinstating this cause of
5 action and the matter may be reset for pre-trial or trial."

6 So it was dismissed with the right to reinstate the
7 action, not dismissed without (sic) prejudice.

8 THE COURT: And did you --

9 MR. ESKANOS: So the adversary action that we filed on
10 February 10th, the same date that Washington Mutual -- as the
11 court entered -- the court's entry of default for the 200-and-
12 some-odd million against Washington Mutual, GMAC, at that
13 minute filed a motion for substitution of plaintiffs --

14 THE COURT: Well, you didn't --

15 MR. ESKANOS: -- and then they told Judge --

16 THE COURT: -- get a determin --

17 MR. ESKANOS: -- Cristol?

18 THE COURT: -- you didn't get a determination from the
19 court to enter judgment; that was a clerk's entry of default --

20 MR. ESKANOS: Yes. It was a clerk's entry.

21 THE COURT: -- because no answer was filed.

22 MR. ESKANOS: The Florida Fraudulent Transfer
23 statute -- I'm sorry; I didn't mean to stop you; I'm sorry.

24 THE COURT: Go ahead and finish up your argument.

25 MR. ESKANOS: Okay. The Florida Fraudulent Transfer

1 statute is very clear. It says, "Once a claim is made," it
2 doesn't matter -- "Once a lawsuit is filed, if an asset is
3 transferred solely to avoid enforcement of the judgment," and
4 that's exactly what the attorney told the judge, Your Honor, we
5 are doing this to avoid Mr. Eskanos enforcing his default
6 judgment against WaMu against his mortgage.

7 Our plan was to get a default judgment against WaMu
8 and then enforce that judgment against the mortgage that GMAC
9 claimed belong to them.

10 Now, GMAC says, Your Honor, we purchased this in
11 2010 -- excuse me; February 2nd, 2012 and we just purchased
12 this mortgage and that's why we transferred it. They didn't
13 say they were servicing it, they didn't say that they were
14 holding it for someone else. They told the judge that they
15 purchased that mortgage in February of 2012. That was an utter
16 lie.

17 Second lie that they committed was when we filed --
18 after all this fraudulent foreclosure action was going on, the
19 IFR came about. We said great. Maybe this will be a way for
20 us to get relief. So we filed a claim with the IFR. IFR never
21 notified us we had a right to file a claim; we had to notify
22 them that we wanted to pursue a claim. Then we filed our claim
23 with the IFR and Rust Consulting. We received a letter back
24 from Rust Consulting that says, "GMAC Mortgage, LLC's records
25 indicate that your mortgage loan was not in the foreclosure

1 process during the eligible review period of January 1st, 2009
2 to December 31st, 2010." That is a blatant lie. Whether they
3 were servicing it, whether they actually owned our loan,
4 whatever you want to call it, they lied to the IFR. Once they
5 lied to the IFR, the IFR believed their story and deprived us
6 of our claim. That's when they sent the IFR the 5,000 pages
7 that I've attached as an exhibit to the Court. And I apologize
8 for length. I don't have any way to electronically file that.
9 I apologize.

10 Anyway, so we sent the -- we sent the IFR the 5,000
11 pages showing yes, in fact, we were victims of fraud. There's
12 a forged note in our case, the whole thing. We sent all that
13 stuff to the IFR. After they received our proof including a
14 copy of the docket showing that we were in foreclosure during
15 that trial period, they told us well, we don't really have an
16 appeal process but we'll consider the document. They looked at
17 the document, they called GMAC then they called us back and
18 said sorry, GMAC says you weren't in the foreclosure process,
19 we stand by our ruling, you are now deprived of any right of
20 any recovery whatsoever under the IFR.

21 Our claim and our motion for relief from the automatic
22 stay is on two grounds; one for the violation of the Florida
23 Fraudulent Transfer Act, that is the admitted on-the-record
24 transfer of the asset or the proposed asset --

25 THE COURT: I don't have your motion --

1 MR. ESKANOS: -- or our mortgage --

2 THE COURT: -- I don't have your motion to lift the
3 automatic stay in front of me, Mr. Eskanos. All I'm doing --

4 MR. ESKANOS: Oh, I'm sorry. Well, I gave that -- I
5 paid the fee. I'm not sure --

6 THE COURT: Stop.

7 MR. ESKANOS: -- of the hearing, Your Honor.

8 THE COURT: Stop. What I'm dealing with is the
9 debtors' objection to your claim. I haven't seen --

10 MR. ESKANOS: And I understand that but the basis for
11 our motion for relief from the automatic stay is listed as the
12 first basically two or three pages of our response, Your Honor.
13 I'm sorry. It's the same reasoning -- the same reasoning
14 behind our motion for relief from the automatic stay is also in
15 here, and that is a violation of the Fraudulent Transfer Act
16 that occurred in February of 2012. Forget about all the other
17 prior stuff. Yes, we won, we won, we won. We went up to the
18 Supreme Court with the fraudulent, whatever. The fact of the
19 matter are two things; one, once we got a judgment against
20 Washington Mutual, they substituted plaintiffs. We contacted
21 JPMorgan Chase who filed a pleading with the court in a
22 separate Washington Mutual case that Washington Mutual did not
23 exist on February 10th of 2012, could not have signed, and did
24 not assign any right or sign any agreement which gives JPMorgan
25 Chase -- excuse me -- JPMorgan Chase, Washington Mutual never

1 gave any right to GMAC to service our loan, to own our loan,
2 and it didn't sell it on that date, and that's the date that
3 they told the Court they purchased it.

4 THE COURT: All right, let me --

5 MR. ESKANOS: It was a fraudulent transfer and a
6 fraudulent concealment of --

7 THE COURT: I have your --

8 MR. ESKANOS: -- action and that was the basis of our
9 claim.

10 THE COURT: -- I have your argument --

11 MR. ESKANOS: I'm sorry?

12 THE COURT: -- Mr. Eskanos. Mr. Wishnew, when did
13 GMAC acquire the loan?

14 MR. WISHNEW: October 27, 2011, Your Honor.

15 THE COURT: 2011?

16 MR. WISHNEW: Sorry. Wait. GMAC Mortgage acquired
17 the servicing rights to service this mortgage or service this
18 loan October 2011.

19 THE COURT: And did it acquire the loan subsequently?

20 MR. WISHNEW: RSC had acquired the loan previously.

21 THE COURT: When?

22 MR. WISHNEW: I believe that's -- it was in 2005, Your
23 Honor.

24 THE COURT: All right. Let me take the matter
25 under --

1 MR. ESKANOS: You want to know the date, Your Honor?

2 THE COURT: No. I'm going to stop. I'm going to take
3 the matter under submission.

4 MR. ESKANOS: Thank you.

5 THE COURT: All right.

6 MR. ESKANOS: Thank you, Your Honor.

7 MR. WISHNEW: Your Honor, I understand you're taking
8 it under submission, do you want me to address any of the
9 factual points that Mr. Eskanos raised?

10 THE COURT: Well, go ahead. I'm going to -- briefly.

11 MR. WISHNEW: Okay. Very briefly.

12 So with regards to -- I think as Your Honor
13 recognizes, the entry of default was not a default judgment
14 just simply entry of default. Very well.

15 With regards to whether the proceeding has been
16 closed, according to the docket on April 23rd, 2013, the
17 adversary case was closed and the adversary case was dismissed
18 as a result of the dismissal of the bankruptcy case.

19 Last point, with regards to the IFR allegation.
20 Simply, Your Honor this is something where we serviced the
21 loan -- it's a matter of chronology -- we began servicing the
22 loan October 27th, 2011. The question from the IFR is was GMAC
23 Mortgage in a foreclosure with Mr. and Ms. Eskanos from January
24 1st, 2009 through December 2010? The answer is no. So that's
25 why we said to them we -- it's not on our records because we

1 were not in a foreclosure so our representation was completely
2 accurate and I'll leave it at that, Your Honor.

3 THE COURT: I'm taking the matter under submission.

4 MR. WISHNEW: Thank you.

5 MR. ESKANOS: Your Honor, am I excused?

6 THE COURT: Yes, you are.

7 MR. ESKANOS: Thanks, Your Honor. Have a great day.

8 MR. WISHNEW: Your Honor, that brings us to the matter
9 of Caren Wilson, claim number 4754. I believe Ms. Nora's in
10 the courtroom and has put in an appearance for Ms. Wilson.

11 This is a matter, Your Honor, which we are not going
12 to proceed with today. The reason --

13 THE COURT: As I understand it, there was an amended
14 claim, 475 --

15 MR. WISHNEW: 7181 --

16 THE COURT: Okay. 4754, which is the claim as to
17 which you have objected, has been superseded by an amended
18 claim?

19 MR. WISHNEW: That's the representation, Your Honor,
20 yes.

21 THE COURT: Have you verified that there was an
22 amended claim that was filed.

23 MR. WISHNEW: Yes, there was an amended claim that was
24 filed.

25 THE COURT: And what is your intention to do with

1 respect to the amended claim?

2 MR. WISHNEW: Our intention is to address both this
3 claim, 4754, and 7181 in a more complete objection that
4 addresses not only the merits of 4754 but also the timeliness
5 and merits of 7181.

6 THE COURT: All right. Ms. Nora, do you want to be
7 heard briefly? This was filed as a -- Ms. Wilson filed this
8 claim without counsel but when did you begin -- have you filed
9 an appearance in this?

10 MS. NORA: I believe I have, Your Honor.

11 THE COURT: Come on up to the microphone.

12 MS. NORA: Thank you.

13 Your Honor, we object to the debtors' taking this
14 matter off of the calendar for today without notice to us. Ms.
15 Wilson and her expert witness have come to court today, would
16 like to make at least a partial record so that the Court is
17 partially informed. I --

18 THE COURT: The matter is adjourned.

19 MS. NORA: Thank you.

20 THE COURT: The matter is adjourned and, Mr. Wishnew,
21 you'll put it back on the calendar after the Court hears its
22 order to show cause why Ms. Nora's pro hac application or pro
23 hac status should be -- whether it should be revoked. We'll
24 see -- Ms. Wilson better consider other counsel, but for now
25 we'll go forward but I'm -- Mr. Wishnew, when was the amended

1 claim filed?

2 MR. WISHNEW: The amended --

3 THE COURT: It was filed on September 23rd, 2013.

4 MR. WISHNEW: That's correct, Your Honor.

5 THE COURT: And --

6 MR. WISHNEW: Which was three weeks after --

7 THE COURT: After you filed your objection.

8 MR. WISHNEW: -- the objection was filed and one week
9 before the response was filed.

10 THE COURT: Absolutely. Which seems to be Ms. Nora's
11 method of dealing with matters. So the matter is adjourned.

12 MS. NORA: Your Honor, I --

13 THE COURT: I don't want to hear anything more from
14 you, Ms. Nora.

15 MS. NORA: That is unfair to me.

16 THE COURT: Ms. Nora, I don't want to hear anything
17 more from you. Let's move on, Mr. Wishnew.

18 MR. WISHNEW: Your Honor, the next matter before the
19 Court is the claim 2552 by Constantino and Sybil Acevedo. Your
20 Honor, this is a claim in the matter -- in the amount of
21 \$497,839.61. Based on extensive review of the debtors' books
22 and records, we show that this claim was -- actually, the
23 underlying note and loan were paid off, funds were applied on
24 August 9, 2013 and a refund of escrow was disbursed to Mr. and
25 Ms. Acevedo August 27, 2013.

1 What they seem to be asserting in their claim is that
2 since GMAC has sought financial relief, they too should be
3 given financial relief. I'm not quite sure -- it's our
4 position that does not serve as a valid basis for a claim, and
5 that at this point, we would ask the claim be disallowed and
6 expunged.

7 THE COURT: For the reasons argued by the debtors the
8 claim of Constantino and Sybil Acevedo, the objection is
9 sustained and the claim is expunged.

10 MR. WISHNEW: Thank you, Your Honor.

11 The next matter is Jan Ibrahim, claim number 997, in
12 the amount of \$206,922.56.

13 THE COURT: Is anybody appearing for Jan Ibrahim?

14 MS. NORA: Your Honor?

15 THE COURT: Go ahead.

16 MS. NORA: I have consulted with Mr. Ibrahim and --

17 THE COURT: Have you filed an appearance on behalf of
18 Ibrahim?

19 MS. NORA: I have not because I --

20 THE COURT: Then I'm not going to hear you.

21 MS. NORA: -- Your Honor --

22 THE COURT: I'm not going to hear you.

23 MS. NORA: -- Mr. Ibrahim's position was if he could
24 not appear himself he wanted me to advise the Court of the
25 facts of his case.

1 THE COURT: You're not permitted, Ms. Nora. You have
2 not appeared on behalf of Jan Ibrahim. I'm not going to listen
3 to you.

4 MS. NORA: Thank you, Your Honor.

5 THE COURT: One more -- one more episode of your
6 speaking on matters in which you do not appear and the court
7 security officer who's in the back of the room will escort you
8 out.

9 Go ahead, Mr. Wishnew.

10 MR. WISHNEW: Thank you, Your Honor.

11 With regards to Mr. Ibrahim's allegations of wrongful
12 foreclosure and wrongful reporting of loan modifications, this
13 is nothing more -- we felt it best to, again, revisit our
14 records, our servicing notes and related records and through
15 Ms. Horst, supplemental declaration and as set forth for the
16 Court the efforts made to -- to work with the debtor -- work
17 with the claimant, ultimately the loan was charged off, meaning
18 that simply the debtor ceased collection efforts -- I'm sorry;
19 ceased foreclosure efforts, and simply the loan remains
20 outstanding at this point in time. It's the debtors' position
21 that they acted properly in connection with any foreclosure and
22 credit reporting activities. They were doing what they were
23 supposed to be doing as a servicer to protect the property and
24 don't believe that Mr. Ibrahim has stated a valid claim for --

25 THE COURT: Let me ask you some questions.

1 There was a loan modification that was entered into.

2 Is that correct?

3 MR. WISHNEW: That is -- it was --

4 THE COURT: Well, there was --

5 MR. WISHNEW: -- it was --

6 THE COURT: -- a trial period.

7 MR. WISHNEW: That's correct. It was set to begin May
8 3rd, 2009.

9 THE COURT: And were there signed papers for a trial
10 modification?

11 MR. WISHNEW: Yes, Your Honor.

12 THE COURT: And what happened? Was there ever a final
13 loan modification approved?

14 MR. WISHNEW: It was not, Your Honor, because the loan
15 modification was denied on June 30th because Mr. Ibrahim failed
16 to make the first payment due under the modification.

17 THE COURT: Okay. All right. The Court has reviewed
18 the objection to the claim of Jan B. Ibrahim. Mr. Ibrahim
19 filed a claim in the amount of \$206,922.56 as a general
20 unsecured claim against GMACM. Homecomings began servicing the
21 loan on April 1, 2009, and GMACM assumed servicing of the loan
22 on or about July 1, 2009. On August 1, 200- -- what's the
23 date? It was transferred to Ocwen. This is --

24 MR. WISHNEW: One minute, Your Honor.

25 THE COURT: This was an older trans -- this wasn't in

1 connection with the sale, was it?

2 MR. WISHNEW: My understanding is that it was
3 transferred to Ocwen contemporaneous with the sale, February
4 16th of this year.

5 THE COURT: Okay. All right.

6 Mr. Ibrahim acknowledges that he applied for a loan
7 modification and he alleges that while he was waiting for a
8 modification, his loan was transferred to a collection agency,
9 FBCS, Inc. The debtors' reply shows that Mr. Ibrahim ceased
10 making payments on his loan in November 2008. The debtors
11 mailed Mr. Ibrahim several breach of contract letters in 2009
12 and offered him a permanent loan modification on April 1, 2009.
13 That loan modification was ultimately -- was denied on June 30, 2009
14 because Mr. Ibrahim failed to make the first payment under the
15 modification. The debtors reported Mr. Ibrahim's account to
16 the credit bureau on several occasions in 2009 because his
17 account was past due at the time. Based on the Court's review
18 of the papers, in particular the events submitted by the
19 debtors, the objection to the claim of Mr. Ibrahim is
20 sustained.

21 MR. WISHNEW: Thank you very much, Your Honor.

22 That brings us to the claim of Pamela Z. Hill, claim
23 number 2429. This is a claim in the amount of 389,331 dollars.
24 This matter -- again, it's not quite clear what the basis of
25 Ms. Hill's claim is. She is not --

1 THE COURT: Hang on. Is Ms. Hill appearing or anyone
2 appearing on Ms. Hill's behalf?

3 Go ahead, Mr. Wishnew.

4 MR. WISHNEW: Thank you, Your Honor.

5 At this point in time, the matter is not in a
6 foreclosure. As Ms. Hill has set forth in her response she has
7 continued making payments to GMAC Mortgage in its capacity of
8 servicer of the loan, and any other allegations are really
9 unsupported and unsubstantiated, and we assert that the claim
10 on its face does not state a valid liability.

11 THE COURT: All right. The Court has reviewed the
12 claim of Pamela Hill and the debtors' objection. Based on that
13 review, the Court finds that the claim fails to state a basis
14 for liability on the part of the debtors. The debtors'
15 objection to the claim is sustained.

16 MR. WISHNEW: Thank you very much, Your Honor.
17 Two more in the -- on the thirtieth omni then I will turn the
18 mike over to my colleague.

19 The claim of Paul and Marge Pfunder, claim number
20 1430, asserted in the amount of 435,000 dollars for the
21 debtors' purported refusal -- or the debtors' refusal to
22 provide a loan modification in regards to Mr. and Ms. Pfunder's
23 loan.

24 THE COURT: All right. With respect to the Pfunder's
25 loan, I'm -- with respect to the Pfunder's claim, I'm

1 adjourning the matter.

2 This is one of those matters that involves a loan
3 modification request. And I expect to get -- we'll talk about
4 as soon as we finish when I'm going to get briefs from the
5 debtor and the committees' special borrower counsel with
6 respect to whether there's any legal claim as I described
7 earlier for wrongful denial of a loan modification, what are
8 the elements of claim. And I'm not intending by my comment to
9 limit it to a specific cause of action. There have been a
10 variety of theories that have been pressed elsewhere and not
11 sufficiently addressed here.

12 I understand the Pfunders' argument. This really --
13 essentially, they're arguing that GMAC refused to complete a
14 loan modification. The Pfunders originally had a 435- -- well
15 they filed a 435,000-dollar secured claim against ResCap on the
16 basis of GMACM's refusal to complete a loan modification. So
17 I'm going to put this one off.

18 MR. WISHNEW: Understood, Your Honor.

19 MS. PFUNDER: Excuse me. This is Marge Pfunder.

20 THE COURT: I'm sorry, Ms. Pfunder.

21 MS. PFUNDER: Am I being excused?

22 THE COURT: Yes, you are. You were able to hear what
23 I indicated? You'll get a further notice of another hearing.
24 I -- if you were listening earlier, I need some additional
25 briefing from both the debtor and the creditors' committee's

1 special borrower counsel with respect to potential causes of
2 action dealing with denial of a loan modification. That's what
3 I understood your claim to relate to and so I want to get that
4 briefing, and then you'll be notified when we're going to have
5 a subsequent hearing.

6 Is there anything you want to add? I'm sorry; I
7 failed to ask you first whether anyone was appearing on your
8 behalf.

9 MS. PFUNDER: If I could, Your Honor.

10 THE COURT: Go ahead.

11 MS. PFUNDER: Just briefly. I'm addressing docket
12 5297, the debtors' reply in support of the thirtieth omnibus
13 objection.

14 THE COURT: Yes.

15 MS. PFUNDER: And page 20 is where our claim begins,
16 1430 -- number 1430 is our claim. There are many false
17 statements within here that -- asserted by GMAC. They're -- in
18 paragraph 57 on page 21, they're asserting that we did, in
19 fact, ask for the loan in August of '08, mentioned that there
20 was full-time employment, you know, opportunities disappearing,
21 but we never once said that it was not affordable because
22 myself, I was still fully employed. So that is an incorrect
23 statement.

24 The trial modification -- the modifications that they
25 submitted to us were very unreasonable. They, first of all,

1 asked us for a contribution which was several thousand dollars,
2 which when we asked attorneys about that they didn't understand
3 what that was. They did not provide us with the type of a loan
4 that we were asking for which was a fixed rate. They wanted to
5 give us an adjustable. And they also didn't really reduce the
6 payments. There was really no essential modification, and the
7 loan was extended for another ten years. So, in essence, there
8 was no benefit for us to do the modification at the time that
9 we did qualify, and we went through this process over two
10 years.

11 My assertion is that they maybe were dealing with
12 unfair business practices and stalling tactics. Additionally,
13 when we went into the short sale because we had no other
14 options at that point to try to save our credit, they -- GMAC
15 continued to harass us with collection calls even though I
16 asked them to stop and I told them under California law, which
17 is where we reside, that when someone asks them to stop
18 calling, that's what the local law is, and I can produce phone
19 records that show that they continually called us and harassed
20 us about the unpaid debt.

21 THE COURT: All right. There's going to be a
22 subsequent hearing, Ms. Pfunder, and you'll be given notice of
23 it and an opportunity to appear. Okay?

24 MS. PFUNDER: Okay. So am I dismissed at this point?

25 THE COURT: You are. Well, I wouldn't say dismissed

1 but you don't have to remain on the phone.

2 MS. PFUNDER: Well, excused from this call.

3 THE COURT: You're excused from the call, Ms. Pfunder.

4 MS. PFUNDER: Thank you very much.

5 THE COURT: Thank you very much.

6 MS. PFUNDER: Bye.

7 MR. WISHNEW: Lastly, Your Honor, with regards to the
8 claim number 604 by Ron Bejarano, this is a claim for 402,000
9 dollars filed on a secured basis. Without getting too far into
10 it, the allegations appear to be that he did not get a loan
11 modification.

12 THE COURT: We're going to put this one in the same
13 category, Mr. Wishnew.

14 MR. WISHNEW: Understood, Your Honor.

15 THE COURT: Look, I'm putting it in the same category.

16 MR. WISHNEW: Okay. Okay.

17 THE COURT: I need to under -- I need to give the
18 debtor and the committee an opportunity to -- and, obviously,
19 look, the issue with most of these creditors is they're pro se
20 and if they want to respond further after they see your briefs
21 that's fine but -- well, let me ask, Mr. Bejarano, are you on
22 the phone?

23 MS. BEJARANO: Yes, Your Honor.

24 THE COURT: Oh, Ms.

25 MS. BEJARANO: This is Ms. Bejarano.

1 THE COURT: Go ahead. Okay. So just so you
2 understand what's happening from listening to the prior
3 matters, I hope you understand that --

4 MS. BEJARANO: Yes, I do understand.

5 THE COURT: -- I'm -- and you'll get a chance, you'll
6 see what -- the briefs that are filed and you or a lawyer on
7 your behalf would have an opportunity to respond as well but
8 you'll be given notice when there'll be a further hearing.
9 Okay?

10 MS. BEJARANO: Yes.

11 THE COURT: All right. Thank you very much.
12 Anything else you want to add?

13 MS. BEJARANO: I had a lot of stuff to add but I'll
14 wait.

15 THE COURT: Okay. Thank you very much.

16 MS. BEJARANO: Okay.

17 MR. WISHNEW: Your Honor, that brings me to the end of
18 my presentation today with regards to the thirtieth omnibus.
19 We will submit the order to chambers that addresses the
20 approvals of the contested matters and those that were not
21 approved -- I'm sorry; those that were not contested as well as
22 submit orders consistent with your rulings on the twentieth,
23 twenty-second, twenty-sixth and twenty-seventh omnis.

24 THE COURT: All right. So let's talk about when
25 you're going to submit briefs.

1 MR. NOSEK: Your Honor, Robert Nosek. My first point
2 of clarification --

3 THE COURT: Why don't you go up to the microphone --

4 MR. NOSEK: Oh, I'm sorry.

5 THE COURT: -- otherwise we have a hard time picking
6 it up from that microphone. Okay, Mr. Nosek?

7 MR. NOSEK: For clarification, the briefs that you're
8 looking for, are you looking for a brief from special
9 counsel --

10 THE COURT: I am.

11 MR. NOSEK: -- and a separate brief from the debtor?

12 THE COURT: I am. I'm looking -- because you
13 represent very different interests, in my view.

14 MR. NOSEK: Okay.

15 THE COURT: And -- so I am looking for separate
16 briefs.

17 MR. NOSEK: Okay.

18 THE COURT: They could be -- it does seem to me they
19 could be simultaneous.

20 MR. NOSEK: That's fine.

21 MR. WISHNEW: Your Honor --

22 THE COURT: So what's --

23 MR. WISHNEW: -- we'd be in a position to submit
24 something in two weeks, Your Honor?

25 THE COURT: Mr. Nosek, is that -

1 MR. NOSEK: Yes. Yes, we would be able to do it the
2 same thing.

3 THE COURT: You know, I mean -- look, none of the
4 papers I had for today -- obviously, this has been something
5 that's been on my mind for a while; that's why I wanted
6 procedures with loan modification issues. And when I started
7 looking, there are -- the Young v. Wells Fargo is the only
8 circuit case I know of, but there are other -- there are
9 bankruptcy court decisions, there may be other state court
10 decisions, there are an array of decisions, not all uniform,
11 and I want -- so two weeks is fine.

12 MR. WISHNEW: Just so I can understand the context of
13 what we're submitting, Your Honor. Are we submitting both a
14 recital of what the elements are of a wrongful denial of a loan
15 modification and also identifying our position as to whether
16 the claims that are being adjourned to address that matter fall
17 within or could constitute a colorable claim under that cause
18 of action?

19 THE COURT: Obviously, the latter would be more
20 helpful to me but I don't expect that from the committee. The
21 committee because you're not representing the borrowers but
22 you're representing creditors, and I am very interested in the
23 committee's view as to what, if any, causes of action exist and
24 what the elements of those claims would be.

25 Mr. Wishnew, do you think you could address both the

1 elements -- you may conclude there aren't any causes of action.
2 I don't know.

3 MR. WISHNEW: Right.

4 THE COURT: That will shorten what you have to do with
5 the individual claims if that's the position you take.

6 MR. WISHNEW: I mean, I would just envision
7 essentially enhancing -- from a factual standpoint, enhancing
8 Ms. Horst's declaration that we submitted here to address
9 some -- some of the gaps that might exist.

10 THE COURT: That would be most helpful to me. And
11 then when you serve those on the creditors, they can file an
12 additional response before we --

13 MR. WISHNEW: Right.

14 THE COURT: And you ought to have maybe somebody from
15 SilvermanAcampora talk to them about getting the resp -- as
16 you've done in the past, Mr. Nosek, talking to people about if
17 they want -- when you want to file stuff. Okay?

18 MR. NOSEK: Absolutely, Your Honor.

19 MR. WISHNEW: Your Honor, should we just contact
20 Deanna in terms of a hearing date on this, Your Honor?

21 THE COURT: Yes. Absolutely.

22 MR. WISHNEW: Okay.

23 MR. NOSEK: Okay.

24 MR. WISHNEW: Very well.

25 THE COURT: We got a lot on the plate over the next --

1 MR. WISHNEW: We do. So I'm ever mindful of that.

2 THE COURT: Yeah.

3 MR. WISHNEW: So that, Your Honor, brings us to item
4 11, on page 23 of the agenda, the thirty-first omnibus
5 objection to claims, late-filed borrower claims. I will cede
6 the podium to my colleague, Meryl Rothchild.

7 THE COURT: Okay.

8 MS. ROTHCHILD: Good afternoon, Your Honor. Meryl
9 Rothchild of Morrison & Foerster on behalf of the debtors.

10 As Mr. Wishnew stated, the next claims objection
11 matter is the debtors' thirty-first omnibus objection to
12 claims, late-filed borrower claims filed at docket number 4902.

13 Your Honor, through this objection, the debtors sought
14 to expunge certain borrower claims that were filed after the
15 general bar date. There were two responses to this objection
16 filed by the September 30th response deadline which are going
17 forward today. These responses include a statement filed by
18 Mr. Paul Anthony Corrado at docket number 5200 in connection
19 with claim numbers 6855 and 6856, and a response filed by Mr.
20 Kenneth Russo, Jr. and Ms. Rayietta Hill filed at docket number
21 5232 -- I apologize -- yes, 5232 in connection with claim
22 number 6843.

23 The debtors filed their omnibus reply in support of
24 the thirty-first omnibus claims objection filed at docket
25 number 5296. And before going into my argument, Your Honor,

1 I'm not sure if any of the respondents or their representatives
2 have appeared.

3 THE COURT: Was there another one by Anaissa Gerwald?

4 MR. RUSSO: Kenneth Russo is here.

5 THE COURT: Hang on a second.

6 What about Gerwald?

7 MS. ROTHCHILD: I was going to raise that a bit later,
8 Your Honor. We weren't sure whether or not this particular
9 filing by Ms. Gerwald at docket 5290 was in connection with the
10 objection because it didn't reference her filed proof of claim
11 or the objection, but we wanted to state it on the agenda out
12 of an abundance of caution. If Your Honor would like, I can
13 certainly fold our arguments in with respect to that if you
14 would like to treat it as a response.

15 THE COURT: All right. Let's deal with -- I'm sorry;
16 who was on -- somebody was on the phone? Was it -- well, first
17 off, is there someone on the phone for Mr. Corrado?

18 All right. And what about for Russo and Hill?

19 MR. RUSSO: Kenneth Russo is here, Your Honor.

20 THE COURT: Thank you very much, Mr. Russo.

21 MR. RUSSO: Thank you.

22 THE COURT: All right. Go ahead.

23 MS. ROTHCHILD: Thank you, Your Honor.

24 THE COURT: So let's deal with Corrado and Russo
25 first, okay.

1 MS. ROTHCHILD: I'm sorry; deal with Mr. Corrado
2 first?

3 THE COURT: Yes, deal with Corrado first.

4 MS. ROTHCHILD: Sure.

5 So, Your Honor, as set forth in the objection, based
6 on a review of Mr. Corrado's proof of claim, it was filed well
7 beyond the November 16th bar date. Specifically, his proof of
8 claim was filed this past June which is nearly seven months
9 after the bar date.

10 As an initial matter, Mr. Corrado does not -- has
11 failed to rebut the presumption that the debtors provided him
12 or his representative with sufficient notice of the bar date,
13 and KCC's affidavits of service and declaration that were filed
14 as exhibits to the reply support that. The filing was properly
15 mailed and timely provided.

16 Further, Mr. Corrado failed to meet his burden of
17 demonstrating that the delay in filing his respective proofs of
18 claim amounted to excusable neglect that would meet the Pioneer
19 standard to permit a late-filed proof of claim.

20 THE COURT: All right. The debtors' objection to the
21 Corrado late-filed claim is sustained.

22 MS. ROTHCHILD: Thank you, Your Honor.

23 With respect to Mr. Russo and Ms. Hill, they filed
24 their proof of claim this past April which is over five months
25 after the bar date. The debtors also believe that these

1 respondents failed to rebut the presumption that the debtors
2 properly provided them with sufficient notice of the bar date.

3 Mr. Russo and Ms. Hill do make an allegation in their
4 response that they only received notice of the commencement of
5 the cases as well as the bar date this past April, however,
6 through KCC's affidavits of service and particular the
7 declaration which notes that they didn't -- that KCC did not
8 receive a notice of an undeliverable mailing, Mr. Russo and Ms.
9 Hill have not provided any evidence to contradict this proper
10 mailing.

11 Again, we -- the debtors also believe that these
12 respondents failed to meet their burden of demonstrating that
13 the delay in filing their proof of claim amounted to excusable
14 neglect standard, and for these reasons we seek to --

15 THE COURT: Let me ask you first before -- I'll let
16 Mr. Russo speak in a minute. Does KCC have an affidavit -- or
17 do their records establish that notice of the bar date was
18 mailed to Russo and Hill?

19 MS. ROTHCHILD: Yes, Your Honor.

20 THE COURT: And was it mailed to the correct address?

21 MS. ROTHCHILD: Yes, Your Honor, and I believe, Mr.
22 Morrow, from KCC is on the line, but if not both Exhibits 2 and
23 3 to the debtors' reply note that KCC mailed notice of the
24 commencement of the cases and the bar date notice to Mr. Russo
25 and Ms. Hill's address, valid addresses which is the very same

1 one that they note on their response as well.

2 THE COURT: Okay. All right. Mr. Russo, let me hear
3 from you.

4 MR. RUSSO: Well, thank you, Your Honor, for just
5 giving me the opportunity to respond, and in the scope of
6 things, although my claim is very small compared to everything
7 else that's going on. You know, it's very important to myself
8 and my family. Basically, the bar date notice was never
9 received. We do not have an individual mailbox attached to our
10 home, Your Honor. It's a community mail slot -- mail box and
11 the United States Postal Service from time-to-time is not
12 always one hundred percent efficient, as we know.

13 We respect the bankruptcy court proceedings but these
14 are just simply the facts. I mean considering the devastating
15 financial outcome that the GMAC Mortgage foreclosure process
16 took, including but not limited to the depletion of our
17 savings, demands for huge lump sum payments, a lawsuit for
18 missed HOA payments, personal family loans, eight months of
19 food bank shopping. I mean if we saw anything, any
20 notification of a potential GMAC Mortgage lawsuit, we would
21 have responded immediately.

22 THE COURT: Let me understand.

23 MR. RUSSO: Once the lawsuit was --

24 THE COURT: You worked for -- who did you work for?

25 MR. RUSSO: I was self-employed, sir --

1 THE COURT: Okay.

2 MR. RUSSO: -- at the time. It's just caused a lot of
3 hardship. And I know that every time GMAC demanded payments,
4 had any type of notification whatsoever, we've always received
5 a certified overnight delivery. I would think that a two
6 million claimant case would be handled with the same urgency
7 and care. You know, basically all I have to say is that we do
8 oppose to the expungement based just on a late-claim filed.

9 THE COURT: But here --

10 MR. RUSSO: We've replied immediately --

11 THE COURT: -- let me ask -- let me ask --

12 MR. RUSSO: -- once we found out through --

13 THE COURT: I want to ask you a couple --

14 MR. RUSSO: -- yes, Your Honor.

15 THE COURT: I want to ask you a couple questions.

16 MR. RUSSO: Yes, sir.

17 THE COURT: Because as I understood your claim, you're
18 seeking to recover money for restitution of lost wages, salary
19 and commission, taxes and penalties to government units, mental
20 anxiety and physical stress. What's the legal theory for your
21 claim against any of the debtors? I mean assuming you were
22 permitted to file a late claim, what's the theory on which you
23 believe you're entitled to recover lost wages, salary,
24 commission, et cetera?

25 MR. RUSSO: Well, I'm not a lawyer, Your Honor, and

1 I'm trying to do the best job that I can. I know that we've
2 just --

3 THE COURT: Just tell me --

4 MR. RUSSO: -- facing a huge hit --

5 THE COURT: Tell me in layman's terms what is it that
6 you believe the debtors did that violated your rights that you
7 believe you're entitled to recover from them?

8 MR. RUSSO: In layman's terms, I believe that we've
9 met the agreement of our contract for eight years and the one
10 time that we needed a little bit of patience or a little
11 leniency or a little understanding, we were met with a severe
12 demand or potential eviction. It was a very stressful process
13 and it caused my income to go way down, caused my wife to
14 become addicted to certain things. It caused a lot of
15 embarrassing unfortunate outcomes, and I just believe that it
16 was handled in a very unprofessional, unkind, unhuman way.

17 THE COURT: Let me just back --

18 MR. RUSSO: Legally --

19 THE COURT: I want to understand that what, you missed
20 a mortgage payment one or more -- how many mortgage payments
21 did you miss?

22 MR. RUSSO: I believe we missed six mortgage payments.

23 THE COURT: Okay. And --

24 MR. RUSSO: And we had to pay a lump sum of about
25 29,000 dollars to just get back into our home and to, you know,

1 deserve or earn a loan modification which we've remained
2 current on since with now Ocwen.

3 The claim we're making is very small, Your Honor, but
4 it's --

5 THE COURT: Well, let me just --

6 MR. RUSSO: -- my family and they give us an
7 opportunity to have another beginning, and I believe that it's
8 justified.

9 THE COURT: Well, here's what I'm trying to
10 understand.

11 MR. RUSSO: Yes, sir.

12 THE COURT: So you say you got a loan modification,
13 did you get it from GMAC or from Ocwen?

14 MR. RUSSO: We believe -- I believe that we did
15 receive it from GMAC before they, you know, declared
16 bankruptcy.

17 THE COURT: Okay. And have you -- since getting the
18 loan modification, you've performed in accordance with the
19 terms of the loan modification, in other words, you made the
20 payments that you had to make?

21 MR. RUSSO: Yes, we have, Your Honor.

22 THE COURT: Okay. So what -- here's what I'm trying
23 to understand, Mr. Russo, is --

24 MR. RUSSO: Yes.

25 THE COURT: -- I understand what you're seeking to

1 recover for lost wages and a bunch of other things, and I don't
2 diminish that this has all been very upsetting to you; but you
3 acknowledge that you missed six mortgage payments. What I'm
4 trying to understand is --

5 MR. RUSSO: Yes, sir.

6 THE COURT: -- what is it that you think that GMAC did
7 that was wrong that would entitle you -- if you were permitted
8 to file a late claim -- that would permit you to recover money
9 from GMAC?

10 MR. RUSSO: Well, I believe that the entire mortgage
11 process was done incorrectly. The reason why we missed six
12 payments is because we were now involved with an adjustable
13 rate mortgage with a big balloon payment. The payments were
14 going to go roughly from 5,000 dollars a month to 10- to 14,000
15 dollars a month. When we originally signed the mortgage
16 documents, they were over two inches thick. The gentleman came
17 over to our home, sir, and he just said, you know, we would --
18 I said I would like some explanation. He said this is just
19 standard. If you'd like to get the home, this is what you need
20 to sign. Sign and date. I don't believe that all of the
21 information was given. I believe that it was done in a very
22 unprofessional way with unprecedented consequences, and I
23 believe that that nonexplanation of the original terms led to
24 the six missed payments which is basically were due to --

25 THE COURT: Who was the --

1 MR. RUSSO: -- something that wasn't able to be paid
2 for, sir.

3 THE COURT: -- who was the original lender?

4 MR. RUSSO: GMAC.

5 THE COURT: They were servicing the loan. Who
6 actually -- who is listed on your loan documents as the lender?

7 MR. RUSSO: I believe that -- there's always -- it was
8 just GMAC, sir. I don't know if there was a difference between
9 a lender or the servicer itself.

10 THE COURT: Okay.

11 MR. RUSSO: I know since February, it's been handed to
12 Ocwen, but before that I don't know of any other name besides
13 GMAC Mortgage.

14 THE COURT: And when did you take out the loan? Was
15 this a -- was this a purchase money loan or a refinance?

16 MR. RUSSO: This would have been a refinancing.
17 Possibly around 2005; maybe around that time.

18 THE COURT: All right. Thank you.

19 MR. RUSSO: 2004.

20 THE COURT: All right. Let me hear the debtors'
21 response. Was GMAC the original lender?

22 MS. ROTHCHILD: Your Honor, we don't have that
23 information at this time, but we can certainly provide that to
24 the Court.

25 THE COURT: All right. I'm going to take the matter

1 under submission.

2 MS. ROTHCHILD: Okay. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MS. ROTHCHILD: And with respect to Ms. Gerwald's
5 filing, how would you like us to proceed?

6 THE COURT: Tell me about -- what -- I'm at a loss
7 about this.

8 MS. ROTHCHILD: We're a bit unclear as to what it is
9 proposing --

10 THE COURT: Let's adjourn the -- well, let me ask you.
11 Mr. Nosek, have you had any commun -- you or one of your
12 colleagues had communication with Ms. Gerwald?

13 MR. NOSEK: Your Honor, we have had communication with
14 Ms. Gerwald, or who we believe to be Ms. Gerwald, by mail only.
15 We believe that she's in prison in Florida; and our information
16 is it was for bankruptcy fraud in the case.

17 THE COURT: Say that again.

18 MR. NOSEK: For bank -- she is in prison for
19 bankruptcy fraud in some other case somewhere --

20 THE COURT: Okay.

21 MR. NOSEK: -- that she was involved in.

22 We have had communications back-and-forth again but
23 it's by writing, but we have a hard time understanding what her
24 claim is as well. I believe she's not on a mortgage on the --
25 if this is the correct one, she's --

1 THE COURT: When was -- when was she -- when did she
2 seek to file a late claim? I guess its styled as a motion to
3 request original mortgage loan presented to the debtor and the
4 court.

5 MS. ROTHCHILD: Based on --

6 THE COURT: If that's the way it's styled but --

7 MS. ROTHCHILD: Yes. Based on my understanding, Your
8 Honor, Ms. Gerwald and Mr. Brian Powers of SilvermanAcampora
9 had some communications, and she sought his assistance in
10 submitting proofs of claim in June of 2013 to KCC. So it was
11 this past June. And I think -- I'm not exactly sure of the
12 entire nature of her communications with Mr. Powers but I
13 believe he attempted to explain to her that the bar date had
14 certainly passed and she --

15 THE COURT: Okay. And the bar date was November 16,
16 2012?

17 MS. ROTHCHILD: Correct.

18 THE COURT: The objection to the Gerwald claim is
19 sustained.

20 MS. ROTHCHILD: Thank you, Your Honor.

21 MR. RUSSO: Is Russo finished, Your Honor?

22 THE COURT: Yes, it is, Mr. Russo.

23 MR. RUSSO: Thank you, Your Honor.

24 MS. ROTHCHILD: So, Your Honor, I believe next on the
25 agenda is the debtors' thirty-third omnibus objection which I

1 believe is Maryann Gallagher of Curtis Mallet will be
2 presenting that.

3 THE COURT: Okay.

4 MS. GALLAGHER: Good afternoon, Your Honor. Maryann
5 Gallagher from Curtis, Mallet-Prevost Colt & Mosle on behalf of
6 the debtor as its conflicts counsel.

7 I'm here today on the debtors' thirty-third omnibus
8 claims objection to facially defective and time barred
9 securities claims, docket number 4996. Fortress is the
10 conflict party in this claims objection.

11 Curtis filed the thirty-third omnibus claims objection
12 and the declaration of the Lewis Kruger in support on September
13 9th, 2013. Service was done by KCC on that same day. The
14 response date for the debtors' thirty-third omnibus claims
15 objection was September 30th, and no responses were received by
16 the debtors.

17 THE COURT: All right. As I understand it, the
18 debtors believe that the claims to be based on alleged
19 misstatements and offering materials for RMBS securities that
20 were -- the debtors issued between 2001 and 2007. Am I correct
21 so far?

22 MS. GALLAGHER: That's correct, Your Honor.

23 THE COURT: And that the claims that they seek to
24 assert are based on Sections 11 and 12(a)(2) of the Securities
25 Act of 1933. Is that correct?

1 MS. GALLAGHER: To the best we can ascertain, Your
2 Honor.

3 THE COURT: And Section 13 of the Securities Act
4 requires claims under Section 11 and 12(a)(2) to be asserted
5 within one year from when the plaintiff discovered or
6 reasonably could have discovered the alleged instrument within
7 three years from the security -- the date the security was
8 offered or sold. Correct?

9 MS. GALLAGHER: Correct.

10 THE COURT: And the debtor asserts that the claims as
11 listed in Exhibit A were not brought within those time periods.

12 MS. GALLAGHER: That's correct, Your Honor. There's
13 no record of any claims being brought.

14 THE COURT: Okay. And that statute of limitations --
15 or limitations is in 15 U.S.C., Section 77(m). No responses
16 were filed to the objection based on -- you've indicated the
17 Kruger declaration was submitted in support of the objection.
18 The objection is sustained.

19 MS. GALLAGHER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Whereupon these proceedings were concluded at 1:58 PM)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

DEBTORS'	DESCRIPTION	PAGE
1 [Docket #5228]	West declaration	15
2 [Docket #2559]	Dempsey	15
	declaration and	
	exhibits	
3 [Docket #5230]	Nolan declaration	16

RULINGS

	Page	Line
Debtors' motion for amendment of Kruger	18	20
engagement letter approved		
Foreclosure Review Professional motions	19	9
continued until November 7		
Order to show cause why Ms. Nora's pro	75	9
hac vice admission is unclear		
Debtors' objection to Juana Cerna's	106	6
claim 3816 sustained		
Debtors' objection to Fannie Kendrick	107	25
Dietrich's claim 1385 sustained		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X (Contd.)

RULINGS (Contd.)

	Page	Line
Debtors' objection to Phenon Walker's	110	14
claims 5429 and 4942 sustained		
Debtors' objection to Fisher claim 1972	131	22
is sustained		
Constantino/Sybil Acevedo claim expunged	146	7
Jan Ibrahim's objection to claim sustained	149	20
Debtors' objection to claim by Pamela Hill	150	13
sustained		
Debtors' objection to Paul Corrado	161	21
late-filed claim sustained		
Objection to Anaissa Gerwald claim	170	18
sustained		
Debtors' Thirty-Third omnibus objection	172	18
to claims sustained		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D 492

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: October 11, 2013